

# Texas Commission on Environmental Quality

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## INTEROFFICE MEMORANDUM

**To:** Air Permits Division Staff **Date:** January 6, 2006

**From:** Richard A. Hyde, P.E., Director, Air Permits Division  
Office of Permitting, Remediation and Registration

**Subject:** Permit Application Avoidance Guidelines

In order to meet Air Permit Division (APD) performance standards, it will be necessary to void permit applications (projects) if an applicant is not responsive to requests for information or has changed the scope of a project. This includes projects with enforcement ramifications associated with a voidance such as Title V, Voluntary Existing Facility Reduction Permits (VERP), and Existing Facility Permit (EFP) applications.

Any project may be voided. To do so there must be a clear line of communication between APD and the applicant about the implications regarding voidance of a project, particularly the compliance ramifications of voiding a Title V, VERP, EFP, or renewal application. When all steps in Attachment A or B are followed, the project will be voided if a company fails to completely respond to requests for additional information in a timely manner. **The voidance package should not come as a surprise to the applicant or APD management.**

Management is responsible for assigning appropriate priorities for all APD permit projects. Continuous evaluation and reassessment of priorities is key to the success of this task. For certain permit projects under consideration for voidance, management may decide to reallocate APD resources toward those permit projects whose applicants exhibit an appropriate level of effort in assuring their permit projects are completed in a timely manner. APD may, in some cases, re-align resources to work on other projects that are complete until an applicant has addressed the needed information on a related or non-related pending project that is deficient.

See Attachment A, "Voiding Projects Without Enforcement Consequences", and Attachment B, "Voiding Projects With Potential Enforcement Consequences", for detailed processing information.

Links to Attachments:

[Attachment A](#)

[Attachment B](#)

[Attachment C](#)

**Attachment A**  
Voiding Projects Without Enforcement Consequences

Permit reviewers will follow this process when resolving deficiencies of these project types:

- New Construction Permits
- Flexible Permits
- Amendments to existing permits or existing flexible permits
- Standard Permits
- Permit-by-Rule registrations
- Permit Alterations
- Qualified Facility Changes

Step I. For permit applications, the applicant should be provided with a written 30-day deficiency letter describing the needed information and the voidance process. For Permit by Rule (PBR) or Standard Permit (SP) registrations, the applicant should be provided with an email or fax, allowing the applicant a maximum of five working days to respond, describing the needed information and the voidance process. The letter, fax, or email should also inform them that if their application is voided they will be required to apply for a new permit or authorization, satisfying all of the regulatory requirements associated with that action.

A. For a New Source Review (NSR) preconstruction permit authorization, applying for a new permit or amendment would require

- best available control technology
- federal permitting requirements (applicability, netting, and offsets)
- compliance with state and federal rules
- impacts review
- republish notice (if public notice was required).

If the new application is received within six months of the voidance, the existing fee will be applied to the new application. New applications received more than six months after voidance will require a new fee.

B. For a PBR, applying for a new registration would require meeting the conditions of Title 30, Texas Administrative Code (30 TAC) §106.4 and the current PBR. For an SP, a new registration will require meeting the conditions of §116 Subchapter F, and the current SP conditions. In each case the registration must also meet federal permitting requirements (applicability and netting), and comply with applicable state and federal rules. If the new registration is received within six months of the voidance, the existing fee will be applied to the new registration. New registrations received more than six months after voidance will require a new fee.

Step II. If a complete submittal of the requested information is not received in a timely manner, a second deficiency letter, fax, or email should be sent to the applicant advising that if the information is not received within 15 days, the application will be voided. For Permit by Rule (PBR) or Standard Permit (SP) registrations, no secondary deficiency email or fax is required due to the short deadlines of the project (30 or 45 days). Instead, follow the process continuing from Step III. Any delays due to agency resources not being available should extend the applicant's response time.

In Steps I or II, an email or fax is acceptable provided voidance information is contained in the email or fax and verification of the receipt is requested and received. If previous correspondence does not contain the voidance information, then staff should provide additional correspondence to the applicant (letter, fax or email) with the voidance process clearly identified. This letter, email or fax should clearly reiterate the previously defined submittal deadline or clearly establish the new deadline.

Step III. After any initial or secondary deficiency correspondence has been sent, follow-up the written correspondence with a phone call. Verify the applicant received the correspondence and discuss the implications of not answering the deficiency. These phone calls should be done as soon as practical (within one week) after each letter has been sent to ensure that the applicant has proper notification. During this conversation, determine if the applicant needs more time to provide the answers. Bring the project to the attention of the section manager. The manager will be involved in setting the schedule for response. The applicant should have a clear understanding that the application must be complete by the new deadline or the project will be voided. Incomplete or an inaccurate submittal will not delay the voidance process. The team leader and/or section manager are involved in determining completeness and accuracy of application information.

Step IV. Upon receipt of the requested information, the permit reviewer **must**:

- A. Begin review of the submittal within one week of receipt. The review must be completed as expeditiously as possible.
- B. Determine whether additional information is needed or whether the information is adequate. (Consult the team leader and/or section manager for concurrence.)
- C. If the submittal is adequate resume processing the project
- D. If the submittal is not adequate, proceed to Step V.

Step V. A voidance package is prepared and routed for approval.

- A. It is the Division Director who voids the project, not individual permit reviewers. Applicants are free to contact the Division Director, or anyone else, during the review process. In addition, applicants whose projects are voided always have the option of filing a petition in Travis County District Court, for any commission or Executive Director final agency action (THSC 382.032).
- B. When a recommendation of voidance is made, the project is evaluated to determine whether voidance would cause any increase in emissions due to delay of control projects, or cause a significant business impact with economic consequence to the general public.
- C. The voidance technical review/summary should be used rather than the typical technical review/summary. Only a project record sheet and this technical review/summary are required in the voidance folder. Any additional information that would be helpful may be placed in the folder, but is not required.
- D. The applicant is given a verbal notification in advance (prior to the voidance package entering the signature chain) that the voidance is being sent for signature. During this conversation, it should be clearly stated that if the applicant wishes to pursue the project after the application has been voided, a new application must be submitted which addresses all of the items contained in the deficiency letters. The new application will also have to address all of the regulatory requirements associated with a new permit or authorization. These requirements are enumerated in Step I, above.

**Attachment B**  
Voiding Projects With Potential Enforcement Consequences

Several APD projects may result in formal enforcement action if voided. These include:

- Voluntary Existing Facility Reduction Permits (VERP)
- Existing Facility Permit (EFP)
- Title V Initial Permits
- Title V Revisions
- Title V Permit Voids
- Renewals

Permit reviewers will follow this process when resolving deficiencies with these project types:

Step I. For permit applications, the applicant should be provided a 30-day deficiency letter describing the needed information and the avoidance process. A fax or email may also be used. The letter, fax, or email should also inform the applicant that if their application is voided, they will be required to apply for a new permit or authorization which satisfies all regulatory requirements associated with that action.

- A. For a grandfathered VERP or EFP project, avoidance of the application means that the facilities which were the subject of the project no longer meet the requirements of 30 TAC §§ 116.770 or 116.810. In order to regain authority, the owner/operator must apply for a new permit, standard permit or PBR which must satisfy the criteria listed in Step I of Attachment A. These facilities may also be subject to enforcement action.
- B. For a Title V initial permit, avoidance of the initial application means the facility has lost its authority to operate. Applying for a new Title V permit would require submittal of a new application and compliance with the latest periodic monitoring (PM) requirements upon issuance of the permit. There may also be an enforcement action to address.
- C. For a Title V revision, avoidance of the revision project would mean:
  - 1. For significant revisions, the modification would not be authorized for operation.
  - 2. For minor and administrative revisions, the modification would not be incorporated into the Title V permit.
- D. For a request to void a Title V permit, avoidance of the project would mean that the Title V permit remains active and the permit holder remains subject to deviation reporting requirements, annual compliance certification reporting requirements, and Title V emission fee requirements.

E. Renewals:

1. For renewal of a New Source Review (NSR) pre-construction permit authorization, avoidance of the project means applying for a new permit. Applying for a new permit would require:

- best available control technology,
- federal permitting requirements (applicability, netting, and offsets),
- compliance with state and federal rules,
- impacts review, and
- republish notice (if public notice was required).

If the new application is received within six months of the avoidance, the existing fee will be applied to the new application. New applications received six months after avoidance will require a new fee. These facilities may be subject to enforcement action.

2. For renewal of a Title V permit, avoidance of the project means the facility has lost its authority to operate. Applying for a new Title V permit requires submittal of a new application, compliance with the latest compliance assurance monitoring (CAM) for all applicable units, and the latest periodic monitoring (PM) requirements upon issuance of the new permit. There may also be an enforcement action to address.

Step II. If a complete submittal of the requested information is not received in a timely manner, a second deficiency letter, fax, or email should be sent to the applicant advising that if the information is not received within 15 days, the application will be voided. Any delays due to agency resources not being available should extend the applicant's response time.

In Steps I or II, an email or fax is acceptable provided avoidance information is contained in the email or fax and verification of the receipt is requested and received. If previous correspondence does not contain the avoidance information, then staff should provide additional correspondence (letter, fax or email) with the avoidance process clearly identified to the applicant. The letter, e-mail or fax should clearly reiterate the previously defined submittal deadline or clearly establish the new deadline.

Step III. After any initial or secondary deficiency correspondence has been sent, follow-up the written correspondence with a phone call. Verify the applicant received the correspondence and discuss the implications of not answering the deficiency. These phone calls should be made as soon as practical (within one week) after each letter has been sent to ensure that the applicant has proper notification. During this conversation, determine if the applicant needs more time to provide the answers. Bring the project to the attention of the section manager. The manager will be involved in setting the schedule for response. The applicant should have a clear understanding that the application must be complete by the new deadline or the project will be voided. An Incomplete or inaccurate submittal will not delay the avoidance process. The team leader and/or section manager are involved in determining completeness and accuracy of application information.

Step IV. Upon receipt of the requested information, the permit reviewer **must**:

- A. Begin review of the submittal within one week of receipt. The review must be completed as expeditiously as possible.
- B. Determine whether additional information is needed or whether the information is adequate. (Consult the team leader and/or section manager for their concurrence.)
- C. If the submittal is adequate resume processing the project.
- D. If the submittal is not adequate, prepare an inventory of all other pending APD projects for the company located throughout the state (See Attachment C, Inventory Report).
- E. Provide the report information to your team leader and manager. The managers will use this report to determine whether a re-prioritization of resources is necessary and the appropriate time frame to proceed with Step V.

Step V. A voidance package is prepared and routed for approval.

- A. It is the Division Director who voids the project, not individual permit reviewers. Applicants are free to contact the Division Director, or any one else, during the review process. In addition, applicants whose projects are voided always have the option of filing a petition in Travis County District Court, for any commission or Executive Director final agency action (THSC 382.032).
- B. When a recommendation of voidance is made, the project is evaluated to determine whether voidance would cause any increase in emissions due to delay of control projects, or cause a significant business impact with economic consequence to the general public.
- C. The voidance technical review/summary should be used rather than the typical technical review/summary. Only a project record sheet and this technical review summary are required in the voidance folder. Any additional information that would be helpful may be placed in the folder, but is not required.
- D. Prior to the voidance package entering the signature chain, the applicant is given verbal notification that the voidance is being sent for signature. During this conversation, it should be clearly stated that if the applicant wishes to pursue the project after the application has been voided, a new application must be submitted which addresses all items contained in the deficiency letters. The new application will also have to address all of the regulatory requirements associated with a new permit or authorization. These requirements are enumerated in Step I, above.

## Attachment C Inventory Report

The Inventory Report should be run after a deficiency response submittal has been reviewed and determined to be inadequate. The report information will be provided to the team leader and section manager and used to determine whether a re-prioritization of resources is necessary.

In order to develop the inventory report, the reviewer should follow these steps:

- I. If the CN (Customer Number) is available in the database (IMS), schedule the inventory report through Crystal Enterprise at <http://crystal/crystal/enterprise10/eportfolio/en/logonform.csp>
  - A. Log on in the usual manner, select the report titled "Inventory of Projects for a Given CN (TV & NSR)" in the Air Permitting, Remediation, and Registration/Air Permits Division folder, and click 'Schedule' in the drop-down menu.
  - B. Enter Database Logon information (User name & Password) No user name or password information is required when scheduling reports for the "nsrpims" data source. Leave it blank. However, anyone running the report will still need to enter their Title V login for the "airprod" data source, including NSR staff. All air permits staff have a Title V oracle user name and password.
  - C. Under Parameters, input the Customer Number (CN) associated with the company noted in the permit in the following format CNXXXXXXXXXX.
  - D. Select report format. (Default is Crystal Report.)
  - E. Schedule report (click 'Schedule' on blue bar in upper right corner)

This reports lists all active NSR projects and all active Title V projects, except Administrative Revisions and Off-Permit/Operational Flexibility Actions (OP-NOTIFY).

- II. If a CN is not entered in the database, perform the following steps:

- A. Access the central registry webpage at <http://ntispprd/reporting/>.
- B. Select the "Customer" link at the left of the reporting webpage
- C. Select the "Number or Name" link at the left of the Customer webpage
- D. Enter the name of the company exactly as noted on the permit in the "Name" entry field and select the "GO" button.

*If there is no exact match for company name, broaden the search by entering only the main word or words from the company name. Note any possible matches, and contact your team leader for assistance before proceeding.*

- E. Note all customer numbers identified by the search.
- F. Schedule an inventory report for each of the customer numbers identified by following the instructions in Step I.

*If no customer numbers are identified as a result of the search, contact Rick Goertz of APD at 5606.*

- III. If the CN is present in the database, but the inventory report output is blank, perform the following steps:

- A. Access the central registry webpage at <http://ntispprd/reporting/>.
- B. Select the "Customer" link at the left of the reporting webpage
- C. Select the "Number or Name" link at the left of the Customer webpage
- D. Enter the name of the company exactly as noted on the permit in the "Name" entry field and select the "GO" button.
- E. Validate the existing customer number and/or note any additional customer numbers that are identified.
- F. Schedule an inventory report for each of the additional customer numbers identified following the instructions in Step I.

*If no customer numbers are identified as a result of the search, or if the inventory report output is still blank, contact Rick Goertz, APD at X5606.*