

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Air Permits Division Date: May 10, 2002
From: John Steib, Air Permits Division Director
Subject: Voiding of NSR Permit/Amendment Applications

The purpose of this memo is to discuss and clarify the division's position regarding the voiding of permit/permit amendment applications. Effective immediately, the Air Permits Division will no longer be administratively voiding applications in situations where applicants have failed to provide the information needed to process their applications. We will use the procedure specified in 116.114(b): if an applicant fails to make a good faith effort to provide the required/requested information, the executive director shall void the application and notify the applicant.

The administrative void process was as follows:

1. Sent out first deficiency letter. The letter advised the applicants that if the information was not provided in 30 days, we might administratively void the application.
2. Sent out second deficiency letter. The letter advised the applicants that if the information was not provided in 15 days, we would administratively void the application.
3. Sent out administrative void letter. The letter told the applicants that the application was administratively voided, which meant that it was effectively placed on hold, for 6 months. Reactivation of the project required submittal of a new PI-1 form and the deficient information. If the project was not reactivated within the 6 months, it was automatically voided.

The void process has the same steps:

1. Send out first deficiency letter. The letter advises the applicant that if the information is not provided in 30 days, we may void the application.
2. Send out second deficiency letter. The letter advises the applicant that if the information is not provided in 15 days, we will void the application.
3. Send out void letter. The letter tells the applicant that the application has been voided. If the applicant wishes to pursue the project, they must submit a new PI-1 form and a new application within 6 months following the voidance. If a new application is not received within the 6 months, the company loses the permit fee.

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The main difference is that under the void process that is provided for in 116.114(b), the applicant can not merely “reactivate” an application that has been placed on hold. They will be required to submit an entirely new application because the previous application was voided. The new application will be subject to the state and federal rules and regulations in place at the time of submittal. This means that the applicant will have to address best available control technology, federal permitting requirements (applicability, netting, and offsets) and republish notice, if public notice was required in the previous application. Because voiding an application is a formal determination, we are required to notify the applicant and anyone that submitted comments and/or hearing requests on that application.

We realize that there are several applications that have been administratively voided within the last 6 months. To maintain consistency and provide an orderly transition to the new policy, we will allow these applications to be handled under the old administrative voidance procedure. If the applicant has not reactivated the administratively voided application within the 6-month time frame, the application will be voided and the applicant must submit a new application, complete with a new fee, if they wish to pursue the project.

If you have any questions, please see your team leader or section manager. You can also contact Ruben Herrera or Randy Hamilton directly.

Common Questions

1. If a project is administratively voided and the company fails to reactivate the project within the 180 days, the application is automatically voided. Do we give them another 180 days as specified in 116.114(b)?

No. If the company does not reactivate the project, the application is voided. If the company still wishes to pursue the project, they must submit a new application and new fee.

2. How do we handle cases where the first (30-day) or even second (15-day) deficiency letters have been sent, but we have not yet administratively voided the project?

The company should be notified of the change in procedure. The engineer should send the company one of the new deficiency letters, based on the situation. For example, if the company has repeatedly failed to provide adequate response to request for information, the new 15-day deficiency letter should probably be sent.

3. We sent the company at least one of the old (administratively void) deficiency letters. We have also sent them one of the new (void) deficiency letters. If the company does not respond, do we send out the old administratively void letter?

No. If the company does not respond within the timeframe specified in the last letter, the application should be voided and the company sent the new void letter (C8).