

DRAFT PROPOSED RULEMAKING
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. Department of Environmental Protection
Subpart C. Protection of Natural Resources
Article III. Air Resources

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P.S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

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Aerospace primer—The first layer and subsequent layers of identically formulated coating applied to the surface of an [aerosapce] **aerospace** vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance or adhesion of subsequent coatings. The term does not include primers that are defined as specialty coatings.

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Bulk gasoline terminal—A gasoline storage and distribution facility which has a daily throughput of 20,000 gallons (76,000 liters) or more of gasoline.

Business entity—An organization engaged in commercial, industrial or professional activities including a sole proprietorship, general partnership, limited liability company, limited liability partnership or a corporation.

CARB—California Air Resources Board—The board established and empowered to regulate sources of air pollution in California, including motor vehicles, under California Health & Safety Code Section 39003.

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Commence—As applied to the construction, modification or installation of an air contamination source or facility the owner or operator has the necessary approvals including plan approvals or permits and has either:

(i) Begun, or caused to begin, a continuous program of actual onsite construction of the facility, to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Commence operation—The point in time at which a new or modified facility begins operating and emitting air pollutants.

Commercial exterior aerodynamic structure primer—An aerospace vehicle or component primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

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Indirect heat exchange combustion unit—Combustion equipment in which the flame or products of combustion, or both, are separated from any contact with the principal material in the process by metallic or refractory walls, including, but not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed preheaters, fuel-fired reactors such as steam hydrocarbon reformer heaters and **[pyrolysis]** pyrolysis heaters.

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Major NO_x emitting facility—A facility which emits or has the potential to emit NO_x from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

(i) Ten TPY in an ozone nonattainment area designated as extreme under section 182(e) and (f) of the Clean Air Act (42 U.S.C.A. § 7511a(e) and (f)).

(ii) Twenty-five TPY in an ozone nonattainment area designated as severe under section 182(d) and (f) of the Clean Air Act.

(iii) Fifty TPY in an area designated as serious under section 182(c) and (f) of the Clean Air Act.

(iv) One hundred TPY in an area included in an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c).

(v) For purposes of §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs), twenty-five TPY and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

(vi) For purposes of §§ 129.96—129.100 **[and 129.111—129.115]** (relating to additional RACT requirements for major sources of NO_x and VOCs), one hundred TPY statewide.

Major VOC emitting facility—A facility which emits or has the potential to emit VOCs from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

(i) Ten TPY in an ozone nonattainment area designated as extreme under section 182(e) of the Clean Air Act.

(ii) Twenty-five TPY in an ozone nonattainment area designated as severe under section 182(d) of the Clean Air Act.

(iii) Fifty TPY in an area included in an ozone transport region established under section 184 of the Clean Air Act.

(iv) For purposes of §§ 129.91—129.95, twenty-five TPY and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

(v) For purposes of §§ 129.96—129.100 **[and 129.111—129.115]**, fifty TPY statewide.

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*New motor vehicle [or] **or** new light-duty vehicle*—A motor vehicle for which the equitable or legal title has never been transferred to the ultimate purchaser. For purposes of the Pennsylvania Clean Vehicles Program and the Pennsylvania Heavy-Duty Diesel Emissions Control Program, the equitable or legal title to a motor vehicle with an odometer reading of 7,500 miles or more shall be considered to be transferred to the ultimate purchaser. If the equitable or legal title **is** to a motor vehicle with an odometer reading **[is] of** less than 7,500 miles, the vehicle will not be considered to be transferred to the ultimate purchaser.

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Paving operation—The process of covering an area with stone, concrete, asphalt or other material in order to make a firm, level surface for travel. The term does not include compounds used exclusively as residential driveway sealing compounds **[are excluded]**.

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Responsible official—An individual who is:

(i) For a **business entity, such as a** corporation **or a limited liability company**: a president, secretary, treasurer or vice president of the **[corporation] business entity** in charge of a principal business function, or another person who performs similar policy or decision making functions for the **[corporation] business entity**, or an authorized representative of the person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for, or subject to, a permit and one of the following applies:

(A) The facility employs more than 250 persons or has gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars).

(B) The delegation of authority to the representative is approved, in advance, in writing, by the Department.

(ii) For a **business entity, such as a** partnership or sole proprietorship: a general partner or the proprietor **of the business entity**, respectively.

(iii) For a municipality, State, Federal or other public agency: a principal executive officer or ranking elected official. A principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency—for example, a regional administrator of the EPA.

(iv) For affected sources:

(A) The designated representatives in so far as actions, standards, requirements or prohibitions under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642) or the regulations thereunder are concerned.

(B) The designated representative or a person meeting provisions of subparagraphs (i)—(iii) for any other purpose under 40 CFR Part 70 (relating to operating permit programs), Chapter 127 (relating to construction, modification, reactivation and operation of sources) or Chapter 129.

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Temporary protective coating—A coating applied to provide scratch or corrosion protection during manufacturing, storage or transportation of **[aerosapce]** aerospace vehicles or components.

(i) The term includes peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions.

(ii) The term does not include coatings that provide protection from acid or alkaline chemical processing.

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VOC composite vapor pressure—The sum of the partial pressures of the compounds defined as VOCs and is determined by the following calculation:

MW_i = **[molecular]** Molecular weight of the “i”th VOC compound, G/G-mole.

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§ 121.4. Regional organization of the Department.

The following regions are established **by the Department** for purposes of air pollution control and include the indicated counties:

(1) Southeast Region. Bucks, Chester, Delaware **[, Montgomery and Philadelphia]** and Montgomery Counties. **For purposes of air pollution control, Philadelphia County is under the jurisdiction of the City of Philadelphia, Department of Public Health, Air Management Services.**

(2) Northeast Region. Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Susquehanna, Wayne and Wyoming Counties.

(3) Southcentral Region. Adams, Bedford, Berks, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry and York Counties.

(4) Northcentral Region. Bradford, Cameron, Centre, Clearfield, Clinton, Columbia, Lycoming, Montour, Northumberland, Potter, Snyder, Sullivan, Tioga and Union Counties.

(5) Southwest Region. **[Allegheny, Armstrong,]** Beaver, Cambria, Fayette, Greene, **[Indiana,]** Somerset, Washington and Westmoreland Counties. **For purposes of air pollution control, Allegheny County is under the jurisdiction of the Allegheny County Health Department, Air Quality Program.**

(6) Northwest Region. **Armstrong,** Butler, Clarion, Crawford, Elk, Erie, Forest, **Indiana,** Jefferson, Lawrence, McKean, Mercer, Venango and Warren Counties.

CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

Subchapter B. PLAN APPROVAL REQUIREMENTS

§ 127.11a. Reactivation of sources.

(a) Except as provided by § 127.215 (relating to reactivation), a source which has been out of operation or production for at least 1 year but less than or equal to 5 years may be reactivated and will not be considered a new source if the following conditions are satisfied:

(1) The owner or operator shall, within 1 year of the deactivation submit to the Department and implement a maintenance plan which includes the measures to be taken, including maintenance, upkeep, repair or rehabilitation procedures, which will enable the source to be reactivated in accordance with the terms of the permit issued to the source.

(2) The owner or operator shall submit a reactivation plan to the Department for approval at least 60 days prior to the proposed date of reactivation. The reactivation plan shall include sufficient measures to ensure that the source will be reactivated in compliance with the permit requirements. The permittee may submit a reactivation plan to the Department at any time during the term of its operating permit. The reactivation plan may also be submitted to and reviewed by the Department as part of the plan approval or permit application or renewal process.

(3) **[The owner or operator of the source shall submit a notice to the Department within 1 year of deactivation requesting preservation of emissions in the inventory and indicating the intent to reactivate the source.] {Reserved}.**

(4) The owner or operator of the source shall comply with the terms and conditions of the maintenance plan while the source is deactivated[,] and shall comply with the terms of the reactivation plan and operating permit upon reactivation.

(5) [The owner or operator of the source with an approved reactivation plan and operating permit shall notify the Department in writing at least 30 days prior to reactivation of the source.] {Reserved}.

(b) A source which has been out of operation or production for more than 5 years but less than 10 years may be reactivated **[and will not be considered a new source]** if the following conditions are satisfied:

(1) The owner or operator of the source complies with the requirements of subsection (a).

(2) The owner or operator of the source obtains a plan approval and operating permit which requires that the emission of air contaminants from the source will be controlled to the maximum extent, consistent with the best available technology as determined by the Department as of the date of reactivation.

(c) A source which has been out of operation for 10 or more years shall meet the requirements of this chapter applicable to a new source.

(d) [Other provisions of this section to the contrary notwithstanding, a source that is out of production or operation on November 26, 1994, shall have 1 year to demonstrate compliance with the requirements of subsection (a)(1), (3) and (4).] {Reserved}.

(e) A source located in a nonattainment area that would emit an air contaminant related to the nonattainment designation or a source that would emit NO_x or VOC emissions may not be reactivated unless the proposed emissions are included in the SIP emission inventory or until the proposed emissions of these contaminants from the source are submitted to and approved by the EPA as an amendment of the SIP. The Department may refuse to allow reactivation of such a source for cause.

(f) The source shall have an operating permit prior to reactivation.

§ 127.13a. Plan approval changes for cause.

A plan approval may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:

(1) The permittee constructs or operates the source subject to the plan approval in violation of the act, the Clean Air Act, the regulations promulgated under the act or the Clean Air Act, a plan approval or permit or in a manner that causes air pollution.

(2) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.

(3) The permittee fails to submit a report required by the plan approval.

(4) The EPA **or the Department** determines that the plan approval is not in compliance with the Clean Air Act or the regulations thereunder.

(5) The Department determines that the plan approval is not in compliance with the act, the Clean Air Act or the regulations under the act or the Clean Air Act.

§ 127.44. Public notice.

(a) The Department will publish in the *Pennsylvania Bulletin* a notice of receipt and intent to issue for each plan approval application, except plan approval applications subject to the notice requirements of subsection (b). The Department will prepare a notice of receipt and intent to issue in accordance with § 127.45(a) (relating to contents of notice).

(b) The Department will prepare a notice, in accordance with § 127.45(b), of action to be taken on applications for plan approvals for the following:

(1) Sources subject to Subchapter D (relating to prevention of significant deterioration of air quality).

(2) Sources subject to Subchapter E (relating to new source review).

(3) Sources of VOCs that submit plan approval applications demonstrating compliance with Chapter 129 (relating to standards for sources) using § 129.51(a) (relating to general).

(4) Sources located within a Title V facility.

(5) Other sources for which the Department has determined there is substantial public interest or for which the Department invites public comment.

(c) The notice required by subsection (b)(1)—(4) will be completed and sent by the Department to the applicant, the EPA, any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. The applicant shall, within 10 days of receipt of notice, publish the notice on at least **[3 separate days] 1 day** in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located; proof of the publication shall be filed with the Department within 1 week thereafter. A plan approval will not be issued by the Department in the event of failure by the applicant to submit the proof of publication.

(d) If the Department denies a plan approval, the requirements of subsection (c) do not apply. Written notice of a denial will be given to requestors and to the applicant in accordance with § 127.13c (relating to notice of basis for certain plan approval decisions).

(e) In each case, the Department will publish notices required in this section in the *Pennsylvania Bulletin*.

(f) The notice will state, at a minimum, the following:

(1) The location at which the application may be reviewed. This location must be in the region affected by the application.

(2) A 30-day comment period, from the date of publication, will exist for the submission of comments.

(3) Plan approvals issued to sources identified in subsection (b)(1)—(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP and will be submitted to the EPA for review and approval.

§ 127.45. Contents of notice.

(a) The notice of receipt and intent to issue for each plan approval required by § 127.44(a) (relating to public notice) must include the following:

(1) The name and address of the applicant.

(2) The location and name of the source or **[facility]** facility at which the construction, modification, reactivation or installation is proposed.

(3) A brief description of the proposed action, including a brief description of the:

(i) Air contamination source to be constructed, modified, reactivated or installed.

(ii) Air cleaning device or control technology required including best available technology.

(iii) Type of conditions being placed in the plan approval with reference to applicable State and Federal requirements.

(4) The type and quantity of air contaminants being emitted.

(5) The name and telephone number of a person to contact at the Department for additional information.

(6) A statement that a person may oppose the proposed plan approval by filing a written protest with the Department, at the appropriate regional office described in § 121.4 (relating to regional organization of the Department).

(b) The notice of proposed plan approval issuance required by § 127.44(b) must include the following:

(1) The name and address of applicant.

(2) The location and name of the source or facility at which construction, modification, reactivation or installation is proposed.

(3) The type and quantity of air contaminants being emitted.

(4) For sources subject to Subchapter D (relating to prevention of significant deterioration of air quality), the degree of increment consumption expected to result from the operation of the source or facility.

(5) A brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements.

(6) A description of the procedures for reaching a final decision on the proposed plan approval action including:

(i) The ending date for the receipt of written comments or written protests.

(ii) Procedures for requesting a hearing and the nature of that hearing.

(iii) Other procedures by which the public may participate in the final decision.

(7) The name and telephone number of a person to contact at the Department for additional information.

(8) A statement that a person may oppose the proposed plan approval by filing a written protest with the Department, at the appropriate regional office described in § 121.4 (relating to regional organization of the Department).

§ 127.51. Plan approval disposition.

(a) After reviewing a protest or record of a conference or hearing, the Department may take action authorized by this chapter.

(b) A notice of denial or a plan approval will be issued to the applicant. Each protestant who has submitted a comment within the time period set forth in § 127.46 (relating to filing protests) will be notified personally or by **[mailing] emailing** a copy of the plan approval disposition to the address set forth in the protest.

(c) The Department will **[also]** publish notice of its action in the *Pennsylvania Bulletin* which will be deemed to be sufficient notice **[to others]**.

Subchapter E. NEW SOURCE REVIEW

§ 127.210. Offset ratios.

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(b) In complying with the emissions offset requirements of this subchapter, the emission offsets obtained shall be of the same NSR regulated pollutant **[unless interpollutant offsetting is authorized for a particular pollutant in accordance with subsection (c)]**.

(c) The Department may, based on a technical assessment, establish interpollutant trading ratios for offsetting PM2.5 emissions or PM2.5 precursor emissions in a specific nonattainment area or geographic area in this Commonwealth. The interpollutant trading ratios shall be subject to public review and comment for at least 30 days prior to submission to the EPA for approval as a SIP revision.

(d) If the EPA promulgates PM2.5 interpollutant trading ratios in 40 CFR Part 51 (relating to requirements for preparation, adoption, and submittal of implementation plans), the ratios will be adopted and incorporated by reference.

Subchapter F. OPERATING PERMIT REQUIREMENTS

GENERAL

§ 127.403. Permitting of sources operating lawfully without a permit.

(a) **[A] The owner or operator of a** stationary air contamination source operating lawfully without a permit for which fees required by Subchapter I (relating to plan approval and operating permit fees) have been paid **[is authorized to continue to operate without a permit until 120 days after the Department provides notice to the source that a permit application is required or until November 1, 1996, whichever occurs first] shall submit the operating permit application within 12 months of commencing operation.**

(b) If the applicant submits a complete permit application within the time frame required by this section and the Department fails to issue a permit through no fault of the applicant, the source may continue to operate if the fees required by Subchapter I have been paid and the source is operated in conformance with the act, the Clean Air Act and the regulations thereunder.

(c) For a performance or emission standard or other requirement established by the EPA or the Department for the source subsequent to July 9, 1992, but prior to the permit issuance date, the permit may contain a compliance schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by the act, the Clean Air Act or the regulations thereunder.

(d) For the purposes of this section, a source is operating lawfully without a permit if it is a source for which no permit was previously required and the source is operating in compliance with applicable regulatory requirements.

PERMIT APPLICATIONS.

§ 127.412. Compliance review forms.

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(j) Other provisions of this section notwithstanding, a source may, upon approval by the Department, submit the compliance review form required by this section on a periodic basis of not less than once every 6 months. The owners and operators of the facility shall make an election to submit the compliance review information on a periodic basis or as part of the operating permit application with the submission of the first operating permit **[filed after November 26, 1994, or by making an election in writing by May 26, 1995]**. The facility may only change the election with the approval of the Department in writing or upon renewal of the first filed permit or a Title V permit.

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REVIEW OF APPLICATIONS

§ 127.424. Public notice.

(a) Except as provided in § 127.462 (relating to minor operating permit modifications), the Department will prepare a notice of action to be taken on applications for an operating permit.

(b) For sources identified in § 127.44(b)(1)—(5) (relating to public notice), the notice required by subsection (a) will be completed and sent to the applicant, the EPA, any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. The applicant shall, within 10 days of receipt of notice, publish the notice on at least **[3 separate days] 1 day** in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located. Proof of the publication shall be filed with the Department within 1 week thereafter. An operating permit will not be issued by the Department if the applicant fails to submit the proof of publication. The Department will publish notice for the sources identified in § 127.44(b) in the *Pennsylvania Bulletin*.

(c) If the Department denies an operating permit, written notice of the denial will be given to requestors and to the applicant and will be published in the *Pennsylvania Bulletin*.

(d) In each case, the Department will publish notices required in subsection (a) in the *Pennsylvania Bulletin*.

(e) The notice will state, at a minimum, the following:

(1) The location at which the application may be reviewed. This location **[shall] must** be in the region affected by the application.

(2) A 30-day comment period, from the date of publication, will exist for the submission of comments.

(3) Permits issued to sources identified in § 127.44(b)(1)—(5) or permits issued to sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may become a part of the SIP and will be submitted to the EPA for review and approval.

§ 127.431. Operating permit disposition.

(a) After reviewing a protest or record of a conference or hearing, the Department may take action authorized by this chapter.

(b) A notice of denial or an operating permit will be issued to the applicant. Each protestant who has submitted a comment within the time period in § 127.426 (relating to filing protests) will be notified personally or by **[mailing] emailing** a copy of the **[plan approval] operating permit** disposition to the address set forth in the protest.

(c) The Department will **[also]** publish notice of its action in the *Pennsylvania Bulletin* which will be deemed to be sufficient notice **[to others]**.

OPERATING PERMIT MODIFICATIONS

§ 127.461. Operating permit changes for cause.

An operating permit may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:

(1) The permittee constructs or operates the source subject to the operating permit so that it is in violation of the act, the Clean Air Act, the regulations thereunder, a plan approval, a permit or in a manner that causes air pollution.

(2) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.

(3) The permittee has failed to submit a report required by the operating permit or an applicable regulation.

(4) The EPA **or the Department** determines that the permit is not in compliance with the Clean Air Act or the regulations thereunder.

(5) The Department determines that the permit is not in compliance with the act, the Clean Air Act or the regulations under the act or the Clean Air Act.

§ 127.462. Minor operating permit modifications.

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(b) The owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be

changed. The form shall be submitted to the Department by hand delivery or certified mail, return receipt requested **or electronically**.

(c) At the time of submission of the application for a minor permit modification, the owner and operator shall notify the municipality where the source or facility is located under section 1905-A of The Administrative Code of 1929 (71 P. S. § 510-5), any state within 50 miles of the location of the source or facility or whose air quality may be affected by the change and the EPA and shall also publish a notice in a local newspaper of general circulation briefly describing the change including a change in actual emissions, of any air contaminant that would occur as a result of the change.

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Subchapter G. TITLE V OPERATING PERMITS

GENERAL

§ 127.505. Initial application submittal for Title V facilities.

(a) The owner or operator of a Title V facility shall submit the Title V operating permit application within **[120 days after the Department provides notice to the owner or operator that the application is due or by November 27, 1995, whichever is earlier] 12 months of commencing operation**.

(b) The Department will make a completeness determination within the **[timeframe] time frame** established under § 127.421(a) (related to review of applications).

(c) If the applicant submits a complete application within the time frames required by this section and the Department fails to issue a permit through no fault of the applicant, the Title V facility may continue to operate if the fees required by Subchapter I (relating to plan approval and operating permit fees) have been paid and the source is operated in conformance with the act, the Clean Air Act and the regulations thereunder.

(d) The terms and conditions of an existing operating permit issued to the **[source] applicant** shall continue pending issuance of a permit under Title V.

(e) An applicant meeting the requirements of subsections (a) and (c) shall have an application shield. The application shield shall cease if the **[source] applicant** fails to provide information requested by the Department which is necessary to evaluate the Title V permit application.

Subchapter H. GENERAL PLAN APPROVALS AND OPERATING PERMITS

USE OF GENERAL PLAN APPROVALS AND PERMITS

§ 127.621. Application for use of general plan approvals and general operating permits.

(a) **[A] The owner or operator of a** stationary source proposing to use a general plan approval or general operating permit shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the general plan approval or general operating permit.

(b) The application required by this section shall be hand delivered, transmitted by certified mail return receipt requested or submitted electronically.

(c) The Department will take action on the application within 30 days of receipt.