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Permit Shields – Class I Operating Permits

What is the purpose of a Permit Shield?

The Federal Clean Air Act and Title 129-Nebraska Air Quality Regulations allow a major source, as defined in Title 129, Chapter 2, to have a permit shield in its operating permit. The permit shield can protect the source from enforcement action by the U.S. Environmental Protection Agency (EPA) and/or the Nebraska Department of Environment and Energy- (NDEE) as well as public citizen suits. A permit shield provides protection under the following specific circumstances (more details later in this fact sheet):

- Failure of the source to comply with an applicable requirement that was incorrectly addressed in the source's operating permit and/or
- Failure of the source to comply with an applicable requirement that was deemed not applicable in the source's operating permit due to an incorrect NDEE determination that the requirement was not applicable.

A permit shield only provides protection for those requirements addressed in the permit shield condition of the operating permit. For the permit shield to be protective, the source must comply with the requirements in the operating permit. Note that a permit shield does not protect a source from failure to comply with requirements that become applicable after issuance of the operating permit. Nor does a permit shield provide protection if inaccurate information is provided in an operating permit application that leads to an inaccurate NDEE determination of applicability.

How does my source obtain a permit shield?

Title 129, Chapter 7, Section 006.02K allows a major source to request a permit shield in its operating permit application. A permit shield may be requested for an applicable requirement(s) of an emission unit and/or a requirement(s) that appears to be applicable to an emission unit at the source but is not.

What applicable requirements can be in a permit shield request?

An applicable requirement in a permit shield request can be from Title 129, a federal regulation, or a state implementation plan. The requirement must apply to an emission unit at the source. Examples of applicable requirements that can be included in a permit shield request are:

- National Emission Standards for Hazardous Air Pollutant (NESHAP);
- New Source Performance Standard (NSPS); and
- Title 129, Chapter 20 opacity requirements when another opacity standard applies, such as an opacity limit in a NSPS.

What requirements cannot be included in a permit shield request?

A permit shield cannot be requested by a source for a requirement that does not apply or appear to apply to a specific emission unit. For example, a source cannot request a permit shield for a NSPS for boilers when the source does not have a boiler. A source cannot request a permit shield for Title 129 in its entirety or for an entire chapter within Title 129 because these are not emission unit specific. For example, a source cannot request a permit shield for Title 129, Chapter 18 because this chapter adopts NSPS by reference and thus is not specific to an emission unit.

How is a permit shield requested for applicable requirements?

The source must identify in its operating permit application each specific affected emission unit and the applicable requirement for which the source wants a permit shield. The request must identify the specific emission unit by name and identification number, include the citation of the applicable requirement, and explain why a permit shield is being requested. The NDEE may request additional information during its review of the permit shield request. Once the review of the permit shield request is complete, the NDEE will either grant or deny the permit shield request. If the request is granted, the permit shield will be incorporated into the source's Class I operating permit.

The following is an example of how a permit shield works for an applicable requirement that is in the permit shield: an operating permit includes specific NESHAP requirements but states an incorrect date for the submittal of the source's compliance status notification. The source is protected from enforcement action or public citizen lawsuits as long as the source complies with the date in its operating permit.

How is a permit shield requested for requirements that appear to apply but do not?

A source can also request in its operating permit application a permit shield from a requirement that appears to be applicable to an emission unit but actually is not. The request must at a minimum include the following:

- Citation of the requirement that appears to be applicable but is not,
- Emission unit(s) that appears to be subject to the requirement, and
- Explanation of why the requirement is not applicable to the emission unit(s).

Be sure to include enough detail in an explanation to make the case that a requirement is not applicable to the emission unit(s). The NDEE may request additional information during its review of this part of the permit shield. Once the review of the permit shield request is complete, the NDEE will either grant or deny the permit shield. If the request is granted, the permit shield for requirements that appear to be applicable but are not will be incorporated into the source's Class I operating permit. Note that a permit shield that is granted based on inaccurate application information is not valid.

The following is an example of a requirement that appears to be applicable but is not and can thus be included in a permit shield request: a source has a storage tank that was constructed after the applicability date of the NSPS Subpart Kb, which applies to volatile organic liquid storage vessels (volatile organic liquids can be gasoline, solvents, etc.), and meets the size requirement of the NSPS. The material stored by the source in the storage tank has a vapor pressure less than the minimum vapor pressure of stored liquid that would make the NSPS applicable. Therefore, Subpart Kb appears to be applicable to the source's storage tank but actually is not.

What is not affected by a permit shield?

In accordance with Title 129, Chapter 8, Section 014.03, any permit shield granted by the NDEE cannot affect:

- The emergency provisions of Nebraska Revised Statute §81-1507 of the State Act;
- Liability for any violation of applicable requirements or applicable requirements under the Act prior to or at the time of permit issuance;
- The applicable requirements of acid rain provisions in Title 129, Chapter 26;
- The authority of the NDEE or the USEPA to obtain information; or



- Any other permit provisions, terms, or conditions, including, but not limited to, construction permits issued pursuant to Chapter 17 or permits issued pursuant to other State authorities and Titles.

Any request by a source for a permit shield for any of the above will be denied by the NDEE.

What if a requirement is misinterpreted?

If the NDEE finds that an applicable requirement was improperly addressed or not included in the operating permit through no fault of the source, but should have been, the NDEE will reopen and modify the operating permit for cause in accordance with Title 129, Chapter 15, Section 006.

For more information, please contact the NDEE Air Program at NDEE.airquality@nebraska.gov or (402) 471-2186.

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