



HOUSE BILL 259: 2023 Appropriations Act, Sec. 12.11: Air Permitting Revisions

2023-2024 General Assembly

Committee:		Date:	December 6, 2023
Introduced by:		Prepared by:	Jennifer McGinnis Staff Attorney
Analysis of:	Sec. 12.11 of S.L. 2023-134		

OVERVIEW: Section 12.11 of S.L. 2023-134 enacts several changes to statutes governing air quality permitting as follows:

- **Modifies statutes governing review and issuance timelines for Title V¹ and other air quality permits as follows:**
 - **Requires the Environmental Management Commission (Commission) to amend applicable rules to provide that the Department of Environmental Quality (DEQ) must issue, deny, or publish a permit for public notice and comment within 90 calendar days of receipt of an administratively complete application² for a minor modification, or within 270 calendar days of receipt of an administratively complete application for a major modification.**
 - **Provides that if the Commission fails to act on a permit within the required timeframes, a permit applicant, permittee, or other person aggrieved can commence a contested case in accordance with the Administrative Procedure Act (and repeals language that provided that the Commission's failure to act on a permit within previously prescribed timeframes constituted a final agency decision to deny the permit, at which point a permit applicant, permittee, or other person aggrieved was authorized to seek judicial review of the decision).**
- **Requires the Commission to begin rulemaking to create a Title V permit exemption for non-major research and development activities consistent with the United States Environmental Protection Agency's (USEPA) position regarding exemption for such activities as set forth in the July 10, 1995, "White Paper for Streamlined Development of Part 70 Permit Applications." The rules must include, at a minimum, allowance levels and minor permit modification thresholds to promote greater flexibility in research and development activities and to allow facilities subject to Title V permit requirements flexibility to work with DEQ and notify them of research activities with a minor permit modification to maintain compliance. The Commission must complete draft rulemaking activities and submit a Title V program amendment request to the USEPA no later than July 1, 2025.**

¹ Title V of the federal Clean Air Act (CAA), administered by DEQ's Division of Air Quality (DAQ), requires major industrial sources of air pollution to obtain an Operating Permit and comply with permit conditions designed to ensure that operations meet State and federal air quality standards.

² The term "administratively complete" means that all information required by statute, regulation, or application form has been submitted to DEQ for the purpose of processing a permit application.

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- *Expands the activities that can be undertaken prior to obtaining a permit for a new air contaminant source, equipment, or associated air cleaning device at a site or facility, to authorize the construction, but not operation, of such source, equipment, or devices prior to permit issuance upon determination that an application for a permit or permit modification is administratively complete. This exception only applies only, however, to an application for the addition or modification of an emissions source that is not subject to: (i) permit limits set pursuant to programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas, (ii) a residual risk-based hazardous air pollutant standard, or (iii) a case-by-case maximum achievable control technology (MACT) permit requirement issued by DEQ. The section provides that the undertaking of these pre-permitting activities does not entitle an applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.*

This section became effective July 1, 2023.