



## ***Facts about*      Application and Permit Shields**

**T**he Clean Air Act Amendments (CAAA) of 1990 required states to develop and implement a Title V operating permit program. The CAAA also stipulates that each state's permit program contain a provision called a "shield."

The shield is intended to protect sources that apply for and comply with their Title V operating permits. There are two types of shields: an application shield and a permit shield.

### **Application Shield**

#### **What is an Application Shield?**

An application shield is a rule that states that, if you submit a complete application for your operating permit in the time frame specified by Minnesota Rules, you are protected from enforcement action for not having the actual operating permit in hand. The application shield does not apply for applications for permit amendments.

Minn. R. 7007.0350, subpart 3, contains rule language pertaining to the application shield.

#### **How do I get an Application Shield?**

An application that is complete under Minn. R. 7007.0600 must have been submitted and received by the deadline stated in Minn. R. 7007.0350, subp. 1.A. Note that the deadlines for submittals of operating permit applications for existing facilities have all passed.

#### **Is it possible to lose my Application Shield?**

Yes. The protection provided by the shield may be lost if the MPCA must request additional information in order to process your permit application and you fail to respond by the requested deadline.

### **Permit Shield**

#### **What is a Permit Shield?**

A permit shield is language in an air emission permit which provides protection from enforcement action in cases where the Permittee has complied with all conditions of its air emission permit.

Minn. R. 7007.1800 contains the permit shield rule language.

**NOTE:** If you have an existing or expired permit issued under the old permit rule (Minn. R. 7001.1200 - 7001.1220), and you have applied for your new permit within the deadline specified by Minnesota rules, you may continue to operate your facility in accordance with your existing permit until your new (Title V) operating permit is issued.

## What is the purpose of a Permit Shield?

The purpose of the shield is to offer enforcement protection to permittees who, through complying with their permit conditions, have violated a provision of an applicable rule or regulation.

## Are there any conditions to the permit shield?

Yes. The permit shield is effective *only if your permit identifies the specific provision of an applicable requirement* that is the basis for a permit condition, or your permit includes the agency's written determination that other requirements specifically identified are not applicable to the air emission source. In addition, your permit must specifically state that the permit shield is provided. If your permit does not state that a shield is provided, then you have no shield.

## What is an example of how the permit shield applies?

The following is an example of a case in which the permit shield would protect you from enforcement for certain violations, but not for others:

You obtain a permit prior to construction and operation of your new boiler. Your new boiler is subject to federal New Source Performance Standards (NSPS) which are listed in the Code of Federal Regulations (CFR). 40 CFR § 60.7(a)(1),(2) and (3) are specific NSPS provisions that require you to provide the MPCA (within specified time frames) the following written notifications:

(1) date of the start of construction; (2) anticipated initial startup date; and (3) actual start of boiler operation.

Unfortunately, in this case:

- Your permit lists the wrong date for submittal of the notification required by provision (1) of the NSPS. Therefore, although you complied with your permit by submitting the notification in the time frame specified by your permit, your notification is late according to the requirements of the NSPS; and
- Your permit completely misses listing provisions (2) and (3). Therefore, you were not likely aware of these NSPS requirements and you did not submit notifications (2) and (3).

Regarding provision (1): your permit shield does protect you from enforcement action for failure to comply with that specific provision, because it was cited in your permit (even though the date was cited wrong) and you did comply with your permit. If you had not followed your permit, the shield would not apply.

Regarding provisions (2) and (3): You are not shielded from enforcement for failure to comply with these two provisions. The shield only applies if the regulation is specifically cited in your permit, and you complied with what your permit required. In this case, provisions (2) and (3) were not listed in your permit, so the permit shield does not apply.

## Are there any regulations for which I cannot receive a permit shield?

Yes. Minn. R. 7007.1800 specifies that the permit shield cannot be extended to the following rules and regulations:

- The emergency powers of the MPCA or the U.S. EPA specified in Minn. Statutes, section 116.11, and section 303 of the Clean Air Act Amendments (CAAA).

- The liability of an owner or operator of an air emission source for any violations of applicable requirements before or at the time of permit issuance.
- The applicable requirements of the acid rain program consistent with section 408(a) of the CAAA.
- The ability of the MPCA or the U.S. EPA to obtain information through inspections, monitoring, and entry of an air emission source pursuant to Minn. Statutes, section 116.091, and section 114 of the CAAA.

In addition, most individual permits also specify that the permit shield does not apply to the following:

- Any national ambient air quality standards adopted under section 109 of the Clean Air Act, or increment or visibility under part C of Title I of the Clean Air Act
- Any state ambient air quality standard under Minn. R. ch. 7009.
- The state noise pollution control rules, Minn. R. ch. 7030 (unless the permit contains specific provisions related to noise).

## **Are there any situations under which permit conditions are not shielded?**

Yes. The following are examples of permit conditions that are not shielded:

- Permit conditions contained in a minor, moderate, or administrative permit amendment, except as stated in Minn. R. 7007.1400, subp. 1(F).
- A permit condition based on information furnished by the Permittee that the Permittee knew was false or misleading.

## **Where can I go for more information?**

For more information please call the Permit Technical Advisor at (651) 282-5844 or toll-free at 1-800-646-6247.

If you are a small business with fewer than 100 employees, you can also contact the Small Business Assistance Program at (651) 282-6143 or toll-free at (800) 657-3938.



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