

Air Permitting in Mississippi

An Overview

Last Revised: 7/13/2022



Two Types of Air Permits

The Environmental Permits Division (EPD) of the Mississippi Department of Environmental Quality (MDEQ) is responsible for reviewing applications and issuing permits allowing construction and operation of air emissions equipment. The air regulations found in 11 Miss. Admin. Code Pt. 2, Ch. 2 address two types of permits that may be required for new and existing facilities – a **Permit to Construct** and a **Permit to Operate** air emissions equipment. Because Mississippi currently does not have any non-attainment areas (NAAs) with regards to the National Ambient Air Quality Standards (NAAQS), information concerning permitting in NAAs is not provided in this document.

Permit to Construct

3 Categories for New Facilities:

1. **Major Stationary Source** is defined under the Prevention of Significant Deterioration (PSD) regulations in 11 Miss. Admin. Code Pt. 2, Ch. 5, which adopts the federal PSD regulations in 40 CFR 52.21 by reference (with a few exceptions). Major stationary sources require a preconstruction permit, generally referred to as a PSD Permit to Construct.
2. **Moderate Stationary Source** is a source requesting federally enforceable emissions limit or other operating restrictions to avoid being a major PSD source. Moderate stationary sources require a preconstruction permit, often referred to as a PSD-Avoidance Permit to Construct.
3. **“Minor” Stationary Source**, although not specifically defined in the regulations, has potential facility-wide emissions that will not exceed the PSD major source thresholds and needs no emissions limit or operating restrictions to stay below the PSD thresholds. A minor stationary source requires a Permit to Construct unless the source meets an exclusion in 11 Miss. Admin. Code Pt. 2, R. 2.13.

Documenting Exclusions in Chapter 2



1. Rule 2.13.D(5) exclusion for new facilities – Document Potential-to-Emit (PTE) for entire facility
2. Rule 2.13.F exclusion for a de minimis NSR modification – Document emissions change for the project
3. Although fugitive emissions may not be required to determine Title V applicability, they should be addressed in the Title V application for fee purposes.

Exclusions for New Facilities

A Permit to Construct a new (aka Greenfield) facility is required, unless the facility meets one of the exclusions in 11 Miss. Admin. Code Pt. 2, R. 2.13.D. or 2.13.E. These exclusions apply to the entirety of the facility. For example, under Rule 2.13.E(1), a facility that has natural gas fired boilers totaling less than 25 MMBtu/hr is not exempt from a Permit to Construct under this exclusion if there are other sources of air emissions at the facility, which must be considered. The most common exemption from a Permit to Construct for new facilities is Rule 2.13.D(5). This rule exempts stationary sources from the requirement for both a Permit to Construct and a Permit to Operate if facility-wide emissions are (1) less than 10 tons per year (tpy) of PM₁₀, SO₂, NO_x, CO, and VOCs; (2) less than 1.0 tpy of any individual hazardous air pollutant (HAP); and (3) less than 2.5 tpy of total HAPs. Note that this exemption does not apply if the facility has an incinerator (hazardous or solid waste) or is a Concentrated Animal Feeding Operation (CAFO).

Permit to Operate

4 Categories:

1. **Major Stationary Source**, for purposes of operating, is defined under the Title V regulations in 11 Miss. Admin. Code Pt. 2, Ch. 6. A Title V major source, not to be confused with a PSD major stationary source, has potential emissions greater than 100 tpy of a criteria pollutant and/or greater than 10 tpy of an individual HAP and/or greater than 25 tpy of total HAPs. All Title V major sources must obtain a Title V Operating Permit (TVOP).

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Oddities with Operating Permits



1. Sections 112 and 129 of the CAA may require a source to obtain a TVOP regardless of the potential emissions.
2. Insignificant activities are only defined for Title V facilities. Therefore, applications for SMOPs must address all emission sources.
3. Fugitive emissions must be included to determine major source applicability for pollutants addressed in an applicable NSPS or NESHAP, regardless of whether it is one of the listed sources in the PSD/Title V regulations.

2. **Synthetic Minor Source** is a facility requesting federally enforceable emission limits or other operating restrictions to avoid being a Title V major source. These limits/restrictions have often been established in a Permit to Construct. A Synthetic Minor Operating Permit (SMOP) is the type of State Operating Permit issued to such sources under 11 Miss. Admin. Code Pt. 2, Ch. 2.
3. **Significant Minor Source** is a specific facility listed in 11 Miss. Admin. Code Pt. 2, Rule 2.1.C(25). (e.g., cotton gins, rendering plants, etc.) that must obtain a State Operating Permit, if not already required to obtain a TVOP or SMOP.
4. **“True Minor” Source** is a source that does not qualify as a Title V, synthetic minor, or significant minor source and requires no Permit to Operate per 11 Miss. Admin. Code Pt. 2, Rule 2.13.G.

Expediting a Permit

MDEQ has no provisions for expediting a permit action. MDEQ prioritizes permits based on receipt date, economic impact, project schedule, commitments to EPA, etc. Therefore, it is imperative to submit both a timely and complete application as far in advance of the anticipated startup of construction as feasible. For new projects, including new construction and modifications to existing facilities, MDEQ recommends conducting a pre-permit conference call or in-person meeting to discuss permitting needs, timelines, expectations, etc. For projects that require a Permit to Construct, but do not require a PSD permit or case-by-case MACT determination and do not involve medical or hazardous waste incinerators, the applicant may request “Optional Pre-Permit Construction” approval under 11 Miss. Admin. Code Pt. 2, Rule 2.15.B. Optional Pre-Permit Construction approval allows the applicant to undertake construction at their own risk prior to obtaining a Permit to Construct. MDEQ may consider the nature of the project, public interest, or other factors when determining whether to grant approval.

Application Fees: A common question is “What are your application fees for air permits?” Currently, MDEQ has NO application fees for air permits. There is also no fee for requesting emissions inventories used in the PSD air quality analysis. The only air-related fees assessed by MDEQ are annual fees associated with operating a Title V facility.

Addressing Facility Modifications

Modifications at existing facilities may require a Permit to Construct and/or a revision to the existing Permit to Operate. With respect to construction activities, the term “modification” is defined to include physical changes or changes in the method of operation, which results in an increase to actual or potential emissions. A modification at a Title V facility requiring a Permit to Construct, but not constituting a major PSD modification, may be processed either through issuance of a Permit to Construct followed by revision of the TVOP or solely through a revision of the TVOP, per the Optional Title V Modification provisions of 11 Miss. Admin. Code Pt. 2, R. 2.15.C. To use this provision, the TVOP cannot be expired, unless the modification is processed with renewal of the permit. Also, the facility cannot begin construction on the project until the TVOP is revised or a request for Pre-Permit Construction is approved. The facility can only begin operating the modified facility upon revision of the TVOP.

DEQ Air Websites: [Air Regulations](#); [Applications and Forms](#); [NSR Air Quality Modeling](#)

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When is a Permit to Construct required for an existing facility?

The facility must apply for a Permit to Construct if a modification does not meet the “de minimis NSR modification” definition in Rule 2.1.C(5). of Chapter 2, thereby qualifying for the exclusion from a Permit to Construct under Rule 2.13.F. A de minimis NSR modification is a modification in which the emissions increase of each NSR regulated pollutant is less than $\frac{3}{4}$ of the significant emission rate (SER) found in 40 CFR 52.21(b)(23) for a facility that is already a PSD major source, and less than $\frac{3}{4}$ of the PSD major source threshold of 100 or 250 tpy for a source that is not currently a major PSD source. To meet this exemption, the modification cannot be one of the following modifications:

- A major modification under the PSD regulations;
- A moderate modification (i.e., one requiring emission limits, operating restrictions, or other federally-enforceable provisions to avoid being a major PSD modification);
- A modification involving medial or hazardous waste incineration; and
- A modification requiring a case-by-case MACT determination.

The facility can operate under a Permit to Construct for a year, at which time an application for any required Operating Permit (or modification to an Operating Permit) is required.

When to apply for a Permit to Construct rather than the Optional Title V Permit Modification

- The modification is complex or involves modification to many existing emission sources.
- Your operating permit has expired and the timeline for renewal does not align with start of construction and operation for the modification.
- There is uncertainty regarding whether all or part of the modification will move forward.

When do I need to revise the Title V Operating Permit or State Operating Permit?

The Title V regulations in 11 Miss. Admin. Code Pt. 2, Ch. 6 address four specific types of revisions in Rules 6.4.D, E, and F, including (1) Administrative Amendments, (2) Minor Modifications, (3) Significant Modifications, and (4) Section 502(b)(10) changes for operational flexibility. The Title V regulations address the specific criteria for each type of revision, with significant modifications being the only type of Title V revision requiring public notice.

There are no specific regulations addressing revisions to State Operating Permits for synthetic minor and significant minor sources. However, if a change is occurring at a Synthetic Minor facility, the facility must submit an application for modification and obtain a modified permit prior to operating the change.

Timing...

Other than application fees, the question of timing always arises, particularly with new construction. Here are four important steps you can take to prevent hindering the permitting process:

1. Request a pre-application meeting from the branch manager or your permit engineer to review the project;
2. Ensure the application is thorough and complete, prepared by someone knowledgeable with your facility and MDEQ requirements;
3. Propose emission limits, monitoring and recordkeeping that make sense for your facility; and
4. Respond promptly to DEQ comments or requests for review or additional information.

Remember, most permitting actions require a 30-day public comment period and, for Title V actions, a 45-day EPA review.

The table below represents an estimated time range for issuance of an initial permit or approval. Obviously, factors such as staffing, permit priorities, complexity, and outside interest or opposition from third parties or EPA can impact timing.

Air Permit Action	Estimated Time
Pre-permit Construction Approval	<30 days
PSD-Avoidance Permit to Construct	90-150 days
PSD Major Permit to Construct	150+ days
Synthetic Minor Operating Permit	90-180 days
Title V Operating Permit	180 days