

## **Part 63 Extension of Compliance – Procedure**

### **Introduction**

If an owner or operator of an existing source determines they are unable to comply with a relevant standard by a future compliance date established in 40 CFR Part 63, they may request an extension to be allowed up to one additional year to comply with the standard. This extra year is specifically available to sources that need the extra time to install control device(s) to meet the standard. Some individual MACTs allow for an extension of compliance for related reasons, found in the appendices of the MACT itself.

The basis for such a request is found in 40 CFR 63, Subpart A (General Provisions) at 40 CFR 63.6(i)(4)(i)(A):

The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved part 70 permit program and the source is required to obtain a part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls.

Michigan has an approved Part 70 permit program and the AQD can address the extension of compliance requests for Title V sources. Also, for specific Part 63 MACTs which have been adopted by reference in Part 9 (Rules 940 through 960) and granted delegation by the USEPA, the AQD can fully implement and enforce these rules, including granting legitimate compliance extension requests.

The request for an extension of compliance must be submitted in writing to the appropriate authority no later than 120 days prior to the affected source's compliance date (40 CFR 63.6(i)(4)(i)(B)). Any requests for additional time beyond that one-year extension or for an extension for reasons other than installation of control equipment will have to go through EPA for approval.

### **Procedure**

Per 40 CFR 63.6(i)(6)(i), the request for a compliance extension shall include the following:

- A description of the controls to be installed to comply with the standard;
- A compliance schedule, including the date by which each step will be reached. At a minimum, the list of dates shall include:
  - The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated; and
  - The date by which final compliance is to be achieved.
  - The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

- The date by which final compliance is to be achieved.

Per 40 CFR 63.6(i)(12)(i), once a request has been received, staff will have to notify the owner or operator in writing of the status of the extension request.

- If the request is determined to have sufficient information to make a determination, staff have 30 calendar days to notify the owner or operator in writing of approval or intention to deny this request.
- If there is insufficient information in the request to make this determination, AQD will notify the owner or operator and specify the information needed to complete the request.
  - The owner or operator then has 30 days to provide the information requested to AQD.
- Once the additional information has been received and determined to be sufficient to evaluate the request, AQD has 30 days to make a determination of approval or denial.

### **Approving the extension of compliance request**

Per 40 CFR 63.6(i)(10), if the extension of compliance request satisfies all the requirements and is granted by the AQD, the approval letter will contain the following:

- Identify each affected source covered by the extension;
- Specify the termination date of the extension;
- Specify the dates by which steps toward compliance are to be taken, if appropriate;
- Specify other applicable requirements to which the compliance extension applies (e.g. performance tests); and
- Specify any additional conditions that are deemed necessary to assure installation of the necessary controls and protection of the health of persons during the extension period.

The approval letter will be signed by the AQD Chief. Use the PART 63 COMPLIANCE EXTENSION REQUEST APPROVAL template letter under AQD's "General Templates" on SharePoint.

**{Optional}** Staff may require the owner or operator to submit progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress report and the dates by which they shall be submitted need to be specified in the approval letter.

### **ROP issues after extension of compliance request is approved**

Per 40 CFR 63.6(i)(4)(i)(A), once the extension of compliance has been approved, the owner or operator shall apply to have the source's ROP revised to incorporate the conditions of the extension of compliance approval letter through a minor modification. The extension of compliance conditions will be put into Appendix 2 – Schedule of Compliance

### **Denying an extension of compliance request**

Per 40 CFR 63.6(i)(12)(iii), if the request does not satisfy the requirements and the AQD is denying the extension of compliance, staff will do the following:

- Notify the owner or operator in writing of the intent to deny the request together with:
  - Notice of the information and findings on which the intended denial is based; and
  - Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to AQD before further action is taken.
- The final determination to deny any request for an extension will be in writing and will include the specific grounds on which the denial is based. This will be done within 30 calendar days after the presentation of additional information or argument or within 30 days after the final date specified for the presentation if no presentation is made.

The denial letter will be signed by the AQD Chief. Use the PART 63 COMPLIANCE REQUEST DENIAL template letter under AQD's "General Templates" on SharePoint.

### **Referring an extension of compliance request to the EPA**

If the conditions for the extension request do not meet the exact requirements of 40 CFR 63.6(i)(4)(i)(A), but extenuating circumstances exist that make sense for an extension, refer the owner or operator to EPA Region 5, Enforcement Section, for a determination. EPA will then convey their decision to the AQD and the request will either be approved or denied by the AQD based on the input from EPA.

A letter referring the owner or operator to EPA will be signed by the AQD Chief. Use PART 63 COMPLIANCE REQUEST DEFERRAL template letter under AQD's "General Templates" on SharePoint.

If EPA approves or denies the request, follow approval steps above and use the PART 63 COMPLIANCE EXTENSION REQUEST APPROVAL OR DENIAL BASED ON EPA DETERMINATION template letter under AQD's "General Templates" on SharePoint.