

**Texas Commission on Environmental Quality
Air Permits Division
Permit Shield Guidance**

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What is a “Permit Shield?”

A permit shield is documentation in the permit that a potentially applicable requirement does not apply to specific emission sources at the site. This shield is documented in the permit through a site-wide term and condition, and a table in the attachments portion of the permit. Permit Shield authority originates from [40 CFR Part 70](#) and [30 TAC Chapter 122 \(§122.148\)](#).

Here are some other points to remember about a permit shield request:

- The permit shield must be requested for specific emission source(s).
- The potentially applicable requirement must not apply in any operating scenarios.
- The permit shield must be requested on Form [OP-REQ1](#).
- For initial issuance and renewals, all of the claims submitted on the [OP-REQ2](#) are reviewed and approved or disapproved. For significant revisions, a permit shield request will only apply to the unit(s) being revised.
- Permit Shields are considered during initial issuance, renewal, or significant revision.
- If the basis of determination for an existing permit shield is no longer valid, a new permit shield must be requested through a significant revision or during renewal. One exception is the removal of a permit shield may be accomplished through a minor revision.
- Permit shields may be granted down to the Division level for certain state regulations, such as [30 TAC Chapter 115 or 117](#).

And a final point in this general description: the lack of a permit shield request does not alleviate the requirement of the applicant to submit potentially applicable requirements that do not apply (OP-REQ2).

How the Applicant Requests a Permit Shield

The applicant requests a permit shield through a single question on OP-REQ1. At the time of this guidance, [Form OP-REQ1](#) version 05/17, question XI. G. 1. must be answered "YES" in order for the entries on [OP-REQ2](#) to be placed in the Permit Shield Attachment portion of the Permit.

Permit Shield Examples

Approval Cases

- A permit shield may be granted for [40 CFR Part 64](#) Compliance Assurance Monitoring for any one of the following negative applicability reasons:
 - The subject unit's potential to emit is limited to below major source level before control. §64.2(a)(3); or
 - "Inherent process equipment" or "passive controls" do not meet the definition of "control device" in the CAM rule. §64.1; or
 - all of the emission unit's potentially applicable requirements are exempt by the CAM rule. §64.2(b)
- Acid Rain requirements: Units that are potentially subject to the Acid Rain program may be shielded from the acid rain rules provided that a valid negative applicable reason is listed on the OP-REQ2. The negative applicable reason must address at least one of the criteria that define an "affected unit" in the acid rain program, such as size, SO₂ emission rate, selling electricity, or construction date.
- Rule Overlap: Several MACT standards ([40 CFR Part 63 Subparts](#)) provide for rule overlap. Although these conditions look very similar to a stringency determination, the permit shield approach for documenting overlap has been approved for use on the OP-REQ2. For example, a Group I Storage vessel (tank) may not be required to comply with NSPS K or Ka (and get a permit shield for those NSPS rules) when subject to MACT CC.
- Use of rules as reference control technology or referenced test methods in other applicable requirements:

- Example 1: NSR authorization - There are certain circumstances where NSR permits borrow, adopt or incorporate requirements from other "applicable requirements." A common example is where NSR permits addressing flares contain requirements to comply with [40 CFR Part 60, §60.18](#), even though the flare is not truly subject to that rule. Some NSR permits for tanks may use requirements out of the K series, and also a fugitive unit that is not subject to NSPS KKK may have in their NSR permit an option to monitor that fugitive's components in the same manner as proscribed by NSPS KKK.

In each of these examples, the NSR permits are using a reference requirement to establish a control technology as a requirement of NSR. That in of itself does not make the unit subject to that "borrowed" requirement. So the flare is only subject to NSPS A, 60.18 if it is being used to control emissions for another NSPS Subpart. The fugitive is only subject NSPS KKK if it meets that rules applicability criteria (as established in the NSPS KKK table on [OP-UA12](#)).

Likewise, those units may be qualified for negative applicability and a permit shield if they are not subject to those requirements, even though portions of that requirement are used in an NSR permit (for the reasons described above.)

- Example 2: State rules - Like the above example, [30 TAC Chapter 115 Subchapter C, §115.215](#) requires flares to meet performance test standards of NSPS A, §60.18. This does not make them "subject to" NSPS A (unless the flare is really controlling emissions from another unit subject to another NSPS subpart).

Other portions of state rules routinely adopt test methods in the appendices of federal rules such as Part 60, 61, and 63. Yet these state rule requirements do not of themselves make the unit subject to those federal rules. In these cases, the reviewer may grant permit shields from the federal rules when they do not apply. only being used as a reference control technology or referenced test method.

Non-Approval Cases

- 30 TAC Chapter 111, Subchapter A: Visible emissions from stationary vents. Although these requirements can apply to an emission point, those points individually emitting less than 100,000 ACFM are collectively addressed in the terms and conditions. Since the requirements of this section will apply in one form or another, it cannot be shielded. In other words, all emission points were either constructed on or before January 31, 1972, or they were constructed after that date. Therefore, they will all have some form of opacity requirement, and cannot be shielded.
- Requirements for New Source Review prior to construction or modification: Applicants will not be granted a Permit Shield from 30 TAC Chapter 116 nor 106. These apply to all sources of air contaminants.
- 40 CFR Parts 50 and 51: These regulations proscribe the applicability and issuance of PSD and NA permitting. Although a source may avoid these major NSR permits, the rules describe the method for determining that applicability, and are thus always applicable. A permit shield may not be granted for these rules against an emission unit.
- Rules not defined as applicable requirements in an operating permit: units cannot be shielded from a rule that is not an applicable requirement in the Operating Permits Program. Refer to the specific list in the definitions section of 30 TAC Chapter 122.
- Applicable requirements that are not potentially applicable requirements are not authorized for a permit shield. Technical judgment will be applied to determine those applicable requirements that are not potentially applicable. A good starting point are the UA forms themselves. These forms contain tables of data listed for those regulations that we believe are at least potentially applicable.

Example: [40 CFR Part 60, Subpart OOO](#) evaluated against boilers. This rule is not even potentially applicable. Therefore, a shield would not be granted in this case.

- Specific NSR Authorizations: Prevention of significant deterioration (PSD), nonattainment (NA) permits, minor NSR permits, PBR registrations, and Standard Permit registrations, or any other specific NSR authorization:
- NSR authorizations issued at the site are applicable requirements. However, these authorizations are only listed if they are issued to units at the site. Therefore, applicants will not be granted a permit shield for negative applicability for an NSR authorization that does apply.
- Site-wide requirements: site-wide requirements are not eligible for a permit shield because they are not applied to specified emission units. These are generally listed in the Special Terms and Conditions portion of the permit. If a requirement that is normally applied site-wide can be demonstrated to potentially apply to a unit, then a permit shield can be further evaluated as described above. This has been done for [40 CFR Part 68](#), although it must be submitted and reviewed per individual unit. This cannot be done to requirements against a mobile source, such as a tanker truck or rail car.
- Units in a Process:

Can a permit shield be applied to a specific unit inside a process where the rule applies to the process as a whole?

The answer is: no.

The reason for the "no" answer is because this appears to be a low level review, and we are not allowing permit shields at a low-level. The rule applies to the process as a whole, and if any part of the rule applies, then a permit shield may not be granted.

A permit shield could be granted to a piece of equipment that is NOT part of the process, and then the burden to show that the piece of equipment is not part of the process lies with the owner/operator.