

specify procedures for assessing and challenging fees. After a regulated entity exhausts all administrative and judicial appeals of the fee determination, the department may revoke, suspend or modify the issued permit for the activity that is subject to the fee.

However, the regulated entity/permittee may have submitted other applications to the department, such as a permit renewal or permit modification, for an activity directly related to a disputed Environmental Regulatory Program Fee and a permit legitimately revoked, suspended or modified for non-payment of Environmental Regulatory Program Fees. In such cases, the non-payment of Environmental Regulatory Program Fees is one type of violation of the ECL and may be a reason to suspend review of these on-going permit applications.

- Citation: [6NYCRR Part 621.3\(e\)](#), [6NYCRR Part 480](#), [481](#), [482-1](#), [482-2](#), [483](#), [484](#), [485](#), and [486](#), and [Article 72 of the Environmental Conservation Law](#)
- Notification: The applicant is to be provided with written notice of application status and the date on which the UPA time periods are suspended.
- Consent: The applicant's consent is not required.

B. Awaiting Draft Permit

Applications for UPA major projects for federally-delegated permits cannot be determined complete until the department prepares a draft permit or notice of intent to deny the application, even if all application materials have been submitted by the applicant. If the department is not able to provide a draft permit or tentative determination to deny within prescribed UPA time periods, then UPA time periods are to be suspended prior to the due date for determining completeness to provide the department the time to satisfy federally-delegated permit procedures.

- Citation: [6 NYCRR Part 621.7\(b\)\(7\)](#)
- Notification: The applicant is to be provided with a written request to suspend the UPA time period. This request should provide with a date when the department expects it will be able to prepare the Notice of Complete Application and the required draft permit, and when UPA time periods will recommence.
- Consent: The applicant's consent is required.

C. Awaiting Proof of Public Notice

For UPA major projects, the applicant is required to provide public notice (newspaper publication and/or radio announcement) of a Notice of Complete Application with the opportunity for public comment. Public notice may be required for minor projects at the discretion of the department. Instructions for the notice, including notice dates and the requirement to submit proof of notice to the department, are provided to the applicant with the Notice of Complete Application. If proof of notice has not been submitted to the department prior to the due date for determining to hold a public hearing (for major projects) or for final decision (for minor projects), UPA time periods are to be suspended. The suspension shall remain in place until submission of proof of publication.

- Citation: [6 NYCRR Part 621.7](#), and [6NYCRR Part 621.10\(d\)](#)
- Notification: The applicant is to be provided with written notice of application status and the date on which the UPA time periods are suspended.
- Consent: The applicant's consent is not required.

D. Determination to Hold a Public Hearing

When the department determines that a public hearing will be held, the UPA time frames are automatically suspended as of the date of notification to the applicant that a hearing will be convened. The suspension remains in effect during the hearing and ends on the date that the completed hearing record is received. A decision on permit issuance is due 60 days following receipt of the completed hearing record. The time frame of the suspension is widely variable as the time needed to complete a hearing is affected by a variety of factors (e.g., number and complexity of issues addressed, number of parties to the hearing, and the schedules of parties).

Citation: [6 NYCRR Part 621.7\(a\)](#), and [6 NYCRR Part 621.10\(a\)\(3\)](#).

Notification: The applicant is to be provided with written notification of the department's decision to hold a hearing within the required time frame of UPA (within 60 days of the completeness decision date) and that UPA time periods are automatically suspended. This notification is separate and distinct from the Notice of Hearing from the Office of Hearings and Mediation Services.

Consent: The applicant's consent is not required.

E. Agreement to Hold a Settlement Conference

As an alternative to an adjudicatory hearing, the department and applicant may agree to participate in a settlement conference for the purpose of resolving disputed issues. In agreeing to participate in an issues conference, the applicant must also agree to a suspension of the Uniform Procedures time period for making a decision on permit issuance.

Citation: [6 NYCRR Part 621.9\(h\)](#).

Notification: The applicant is to be provided with written notice of application status and the date on which the UPA time periods are suspended.

Consent: The applicant's consent is required.

F. Awaiting SEQR Lead Agency's FEIS

When an agency other than the department is SEQR lead agency and it has determined that an action may have a significant effect on the environment, the department's time period for making a decision on permit issuance is to be suspended pending receipt of the final environmental impact statement from the SEQR lead agency. The UPA regulation provides for the time period suspension to begin no later than 35 days prior to the final decision due date, however the department can begin this suspension soon after the determination of complete application. The suspension will end upon the department's receipt of a Final EIS from the SEQR lead agency.

Citation: [6 NYCRR Part 621.10\(a\)\(4\)](#)

Notification: The applicant is to be provided with written notice of application status and the date on which the UPA time periods are suspended.

Consent: The applicant's consent is not required.

G. EPA Review of Delegated Air Permits

Regulations for the air pollution control program prohibit the department from issuing a final decision until EPA has been provided with a 45 day period to review the responsiveness summary of public comments and the proposed Title V permit. UPA time periods are to be suspended as soon as possible after the close of the public comment period and the public

hearing (if any) for a period of 45 days. The suspension will end after 45 days, and the remaining UPA time period for final decision is provided.

Citation: [6NYCRR Part 621.10\(a\)\(5\)](#), [6NYCRR Part 201-6.4\(c\)](#).

Notification: The applicant is to be provided with written notice of application status and the date on which the UPA time periods are suspended.

Consent: The applicant's consent is not required.

H. Absence of Surety

Under specific program regulations, or at the discretion of the department, an applicant may be required to provide a bond or other financial surety as a prerequisite to permit issuance. In such circumstances, the department shall not issue a final decision until the applicant has posted the required bond. In fact, failure to provide any information, such as proof of surety, explicitly requested by the department for submission by a reasonable date may be grounds for denial. UPA time periods may be suspended prior to the final decision due date and the suspension may remain in place until an acceptable surety is submitted.

Citation: [6NYCRR Part 621.10\(d\)](#), [6NYCRR Part 621.14\(b\)](#), and [6NYCRR Part 423.1\(a\)](#)

Notification: The applicant is to be provided with written notice of the requirement for surety, including a reasonable date for submission to the department. This may be a notice specifically addressing surety or combined with another notice to the applicant. If not received by that date, the department may suspend the UPA time periods and provide the applicant with written notice of application status, or the department may deny the application.

Consent: A suspension of UPA time periods does not require the applicant's consent. However, at any time after notification of the requirement for surety, the applicant may request the department to suspend time periods until such time as they are able to secure the surety, and UPA time periods may thus be suspended by mutual agreement between the department and the applicant.

I. Mutually Agreed Upon Suspension

The department and the applicant may mutually agree to a suspension of any UPA time frame to allow either the applicant or the department to complete certain actions. For example: time for the applicant to respond to supplemental information requested after a determination of completeness or to prepare draft responses to public comments, or additional time for the department to review the application and make its decisions. The agreement is to be confirmed in writing and contain suspension initiation and end dates.

Citation: [6NYCRR Part 621.14\(a\)](#)

Notification: The applicant is to be provided with a written confirmation of the agreement of suspension initiation and end dates.

Consent: The applicant's consent is required.

When suspending application review and time frames, the following policies apply:

- Staff's determinations, decisions or suspensions are to be made at the earliest opportunity to

avoid missing determination or decision deadlines, and applications which can be, should be decided before their due date.

- No application should be deemed approved nor permit granted by default. The department will render a timely final decision in response to any properly filed 5 Day Letter Demand [[6NYCRR Part 621.10\(b\)](#)].
- Suspensions are to be until a specific date, whenever possible, sufficient for staff or applicant to complete identified responsibilities. Indefinite time frame suspensions should be used rarely; for example, when the review decision is dependent on action by an entity other than the department or the applicant.

III. Purpose and Background: The purpose of this policy is to provide guidance to staff on the appropriate use of time frame suspensions in the review of applications for permit subject to the procedural and time frame requirements of the Uniform Procedures (UPA) Act regulations (6 NYCRR Part 621). Proper execution of the time frame suspension provisions of Uniform Procedures avoids situations of default determinations. Default determinations occur when the department fails to make an affirmative determination within the prescribed time frame, which can result in that determination being deemed made by default (in the applicant's favor) on the determination due date.

Two of the key legislative findings contained within the Uniform Procedures (UPA) Act, Article 70 of the Environmental Conservation Law (ECL), are the establishment of uniform procedures and reasonable time periods for administrative action on applications for permit. The statute and its implementing regulations, 6NYCRR Part 621, prescribe several sequential determinations/decisions and time periods for application review: Complete Application Determination, Determination to Convene a Public Hearing, and Final Decision on Permit Issuance. Time periods are established for making these determinations based on permit type and categories of regulated activities. The Uniform Procedures regulations also identify circumstances under which the established time periods may be revised or suspended to accommodate environmental review procedures or in recognition of other procedural and substantive responsibilities of permit applicants and the department.

Time periods and due dates contained in the Uniform Procedures regulations are calculated in accordance with the [General Construction Law, Article 2](#). The first day in a time period is the day after an event, such as date of receipt, date of publication, or date of notification. When the last day of a time period falls on a Saturday, Sunday or a public holiday, the due date is extended to the next succeeding business day. Time period suspension results in halting the counting of days as of a date specified in regulation or in notification of suspension by the department. Counting of days within a time period resumes after the lifting of a suspension with the counting of the first day after the date of notification of suspension discontinuance or the predetermined last date of suspension.

For example, an application for permit is received on October 1, 2001 with a completeness determination due in 15 days. In counting the 15 days, day one begins on October 2, 2001 and a determination is due on October 16, 2001. (In practice, DART accurately determines due dates in accordance with General Construction Law. For manually determining the due date for this example, use your desk calendar to obtain the Julian date [i.e., October 1 is the 274th day of the year], and add 15 days to obtain the due date.) In this example, a time period suspension goes into effect on October 5, 2001 with an end of suspension date of November 15, 2001. Under this scenario, four of the 15 days have elapsed before the suspension goes into effect. November 16 is the first day of the resumption of

counting days, this day being day 5 of the 15 days for determining completeness. A determination is due 10 days later, on November 26, 2001.

IV. Responsibility: In accordance with RGM 94-04 - Role of Project Managers, the assigned analyst/project manager in the Division of Environmental Permits is the individual primarily responsible for ensuring that staff meets UPA time frames or time frames are suspended when necessary. The analyst/project manager must work with the DEC Review Team in making UPA determinations and decisions, in determining that application review should be suspended, and in establishing a realistic new date for the determination or decision. Each DEC Review Team member is to review applications and provide comments to the assigned analyst/project manager in a timely and professional manner, or request additional time for their review. The DEC Review Team should be notified of the suspension and of its effect on their review responsibilities and timing.

In cases where UPA project management is delegated to another program, that program assumes this responsibility.

V. Procedure: As noted in the Policy section, above, applicants should be advised in writing of the department's commencement of a suspension of application review and time period. The notification shall provide the date of suspension initiation, the reason for the suspension, and if within the department's control, the date the suspension will end and the UPA time-clock will resume. When the applicant's prior consent is required, the department's request to suspend application review or UPA time periods and confirmation of the applicant's consent should also be in writing.

The assigned analyst/project manager should undertake the following steps when suspending permit application review and time frames:

1. In advance of the determination or decision due date, send the applicant a letter specifying the reason(s) and authority(s) for
 - a. requesting a suspension, when necessary, or
 - b. advising them that the department has suspended review.
2. Itemize the events that must occur, and/or a date when the department's review will recommence.
3. When the applicant's consent for suspension is required
 - a. provide a specific date for the applicant to respond to the request with their agreement or declination of suspension; and
 - b. include a statement of actions the department will take in the event that no reply is received; or send a confirmation letter acknowledging the applicant's agreement or declination of suspension.
4. Communicate with the DEC Review Team the status of the application and their continuing role in application review.
5. Track deadlines to ensure that responsibilities of DEC staff and applicants/permittees are timely satisfied.

Any application review time frame can be suspended using the DART system. The specific procedures for suspending application time frames are described in the DART On-line Help.

Related References:

- Applicable regulatory citations:
 - [6 NYCRR Part 621](#), Uniform Procedures
 - [6 NYCRR Part 624](#), Permit Hearing Procedures
 - [6 NYCRR Part 423](#), Mined Land Reclamation, Reclamation Bond
 - [6 NYCRR Part 201-6](#), Permits and Registrations, Title V Facility Permits
 - 6NYCRR Part 6NYCRR Part [480](#), [481](#), [482-1](#), [482-2](#), [483](#), [484](#), [485](#), and [486](#), Program Fees
- [Uniform Procedures Act, Article 70 of the Environmental Conservation Law](#)
- [Environmental Regulatory Program Fees, Article 72 of the Environmental Conservation Law](#)
- [General Construction Law, Article 2](#)
- RGM 94-04 - Role of Project Managers
- Department Application Review Tracking (DART) Computer System On-line Help