*** DRAFT – NOT FOR FILING ***

3745-31-09 **Variances on operation.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see~~ the "Incorporation by Reference" paragraph at the end of rule 3745-31-01 of the Administrative Code~~ paragraph (KKKKKK) of rule 3745-31-01 of the Administrative Code entitled, r"eferenced materials."~~.~~]

(A) A variance may be applied for and obtained from the director that allows operation or other use of an air contaminant source that emits an air pollutant in violation of an applicable law pursuant to the provisions of this rule, except for the following:

(1) No variance shall be granted from Chapter 3745-19 of the Administrative Code governing open burning~~, and~~.

(2) No variance shall be granted to a new source, as defined in rule 3745-31-01 of the Administrative Code, from any emissions limitation which was applicable to the source as a new source~~, and~~.

(3) No variance from any rule of the director adopted under Chapter 3704. of the Revised Code may be granted except pursuant to this rule.

(B) Applications for variances shall meet the requirements of rules 3745-31-02 and 3745-31-04 of the Administrative Code.

(1) Any variance application that fails to provide information needed to provide a factual basis for ascertaining compliance with each of the relevant requirements of this rule may be considered defective and be treated as if it had not been filed. Such application shall be returned to the applicant as expeditiously as practicable with an indication of the deficiencies therein. Further processing of the application, including issuance of a proposed or final action or the initiation of any other official response by the Ohio environmental protection agency with respect to the application, will not occur until deficiencies have been remedied.

(2) An application which seeks a variance pursuant to this rule which allows an applicant to emit an air pollutant at a specified level in excess of emissions standards prescribed by applicable law without requiring eventual compliance with such standards shall specify the level of emission sought. Any such application which fails to so specify may be treated as a deficient application as set forth in paragraph (B)(1) of this rule.

(C) Standards for granting variances.

(1) A variance for an air contaminant source may allow an applicant to do the following:

(a) ~~To emit~~ Emit from such source a specified level of emissions of the particular air contaminant which exceeds the level permitted by applicable law, without achieving eventual compliance with the level permitted by applicable law~~; or~~.

(b) To achieve compliance with applicable law pertaining to the particular air contaminant, pursuant to a compliance schedule included as a term and condition of the variance, on a date later than the date provided by applicable law upon which compliance by such source must be achieved~~; or~~.

(c) To emit an air contaminant in accordance with both paragraphs (C)(1)(a) and (C)(1)(b) of this rule.

(2) A variance may be issued only if the applicant either demonstrates the requirements of paragraphs (C)(2)(a) to (C)(2)(c) of this rule, paragraph (C)(2)(e) of this rule, and paragraph (C)(2)(f) of this rule, or, demonstrates the requirements of paragraphs (C)(2)(d) to (C)(2)(f) of this rule:

(a) Either:

(i) The ambient air quality standards for the particular air contaminant to which the requested variance pertains are currently being met throughout the region affected by the emissions from the air contaminant source~~; or~~.

(ii) The emission of air contaminants in accordance with the variance will not prevent or interfere with the attainment of ambient air quality standards by contributing, either singly or in conjunction with other sources, to a failure to attain ambient air quality standards by the date or dates prescribed by applicable law throughout the region affected by the emissions from the air contaminant source~~;~~.

(b) The emission of air contaminants in accordance with the variance will not prevent or interfere with the maintenance of ambient air quality standards by contributing, either singly or in conjunction with other sources, to a failure to maintain ambient air quality standards throughout the region affected by the emissions from the air contaminant source for the particular air contaminant to which the requested variance pertains after such ambient air quality standards are attained~~;~~.

(c) The variance is necessary because compliance with the emission standard from which the variance is sought is, and, to the extent applicant has not complied with such emission standards, has been since the adoption of such

emission standard, technically infeasible, economically unreasonable, or impossible because of conditions beyond the control of the applicant~~;~~.

(d) Bubble concept:

(i) An alternative emission control strategy (bubble concept) is provided which will allow emissions of air contaminant from the source for which the variance is requested to exceed the level permitted by applicable law and will also require emissions of the same air contaminant from another source or sources to be less than the level(s) permitted by applicable law. The alternative emission control strategy shall do the following:

(a) Result in a reduction in actual emissions of the air contaminant from such other source or sources which is equivalent to or greater than the reduction which would occur if the source for which the variance is requested were to comply with applicable law~~;~~.

(b) Result in an actual net ambient air quality improvement which is as good as, or better than, that which would occur if the source for which the variance is requested were to comply with applicable law and if all such other sources were to either comply with applicable law or maintain their actual level of emissions if such level is less than permitted by applicable law~~;~~.

(c) Include applications for variances or PTIOs (or modifications of existing variances or PTIOs) for such other sources at the same facility that specify a level of allowable emissions of an air contaminant which is below the level established by applicable law and which satisfies the requirements of paragraphs (C)(2)(d)(i)(a) and (C)(2)(d)(i)(b) of this rule:

(ii) Air contaminants from different sources shall be considered to be the same for purposes of paragraph (C)(2)(d)(i) of this rule only if they are comparable in terms of type of contaminant.

(iii) Emissions of particulates of the following types shall not be considered, for purposes of paragraph (C)(2)(d)(i) of this rule to be the same as emissions of particulates of any other types:

(a) Asbestos~~;~~.

(b) Beryllium~~;~~.

(c) Coke oven emissions~~;~~.

(d) Lead~~; and~~.

(e) Mercury.

(iv) Emissions of organic compounds of the following types shall not be considered, for purpose of paragraph (C)(2)(d)(i) of this rule, to be the same as emissions of organic compounds of any other types:

(a) Benzene~~; and~~.

(b) Vinyl chloride.

(e) Such compliance with applicable law or other terms and conditions as is required by the variance will be achieved as expeditiously as practicable~~;~~.

(f) If any rule from which a variance is sought has been approved by the administrator of the United States environmental protection agency as part of the Ohio state implementation plan, the applicant must demonstrate those matters required by federal law or regulations, including, but not limited to 42 USC 7410 and 40 CFR Parts 51 and 52 for approval of a revision to the plan, except approval by the administrator or ~~his/her~~ the administrator's representative as a revision to the Ohio state implementation plan.

(D) The director retains the discretion to deny the application upon consideration of evidence regarding matters specified in division (H) of section 3704.03 of the Revised Code which is submitted by the applicant, developed by the agency, or obtained from another source, even though the demonstrations required by paragraph (C) of this rule have been made.

(E) Action on applications for variance.

(1) Prior to taking any action on any application for a variance, the Ohio environmental protection agency may hold a public meeting on the proposed variance in the manner specified in Chapter ~~3745-47~~ 3745-49 of the Administrative Code.

(2) The director shall act on an application for a variance within six months of the filing of a complete application by issuing a proposed or final action.

(3) Variances under this rule shall be issued, denied, modified, or revoked and may be challenged in accordance with the provisions of ~~Chapter 3745-47~~ Chapters 3745-47 or 3745-49 of the Administrative Code.

(a) In issuing, denying, modifying, or revoking any variance, the director shall state ~~his/her~~ the director's reasons in writing. The decision and reasons shall be made publicly available at the cost of reproduction and handling.

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(F) Variances from rules contained in the Ohio state implementation plan.

(1) A variance from a rule which has been approved by the administrator of the United States environmental protection agency as part of the Ohio state implementation plan shall not be issued unless the following occurs:

(a) Such variance has been submitted to the administrator as a revision to the Ohio state implementation plan pursuant to applicable law, including, but not limited to, 42 USC 7410 and 40 CFR Parts 51 and 52~~; and~~.

(b) All requirements of applicable law, including, but not limited to, 40 CFR Parts 51 and 52 have been met, except approval by the administrator or his/her representative as a revision to the Ohio state implementation plan~~; and~~.

(c) The variance contains a condition that the variance will not be effective until approved by the administrator or ~~his/her~~ the administrator's representative as a revision of the Ohio state implementation plan.

~~(d) If a variance has been approved by the administrator pursuant to paragraph (F)(1) of this rule, a renewal of such variance shall not be subject to the requirements of paragraph (F)(1) of this rule unless a significant difference exists between the material aspects of such variance and the renewed form of such variance. For the purposes of paragraph (F)(1) of this rule, a significant difference shall include any change in the final compliance date of any compliance schedule.~~

(2) ~~Upon issuance of a variance authorizing emissions as described in paragraph (C)(1)(a) or (C)(1)(c) of this rule, and upon approval thereof by the administrator as provided by paragraph (F)(1)(c) of this rule, if applicable, the director shall propose to amend the rule from which the variance is issued to provide for emissions authorized by the variance. The amended rule shall be proposed only if, in the director's judgment, such amended rule will conform to all requirements of applicable law, including, if applicable, requirements regarding implementation plans. Following rulemaking procedures mandated by law on the proposal, the director shall take such action on the proposal as is lawful and reasonable.~~ If a variance has been approved by the administrator pursuant to paragraph (F)(1) of this rule, a renewal of such variance shall not be subject to paragraph (F)(1) of this rule unless a significant difference exists between the material aspects of such variance and the renewed form of such variance. For the purposes of paragraph (F)(1) of this rule, a significant difference shall include any extension of the final compliance date of any compliance schedule, but shall not include the reduction in allowable emissions.

(G) Terms and conditions of ~~variations~~ variances.

Upon issuance of a variance authorizing emissions as described in paragraph (C)(1)(a) to (C)(1)(c) of this rule, and upon approval thereof by the administrator as provided by paragraph (F)(1)(c) of this rule, if applicable, the director shall propose to amend the rule from which the variance is issued to provide for emissions authorized by the variance. The amended rule shall be proposed only if, in the director's judgment, such amended rule will conform to all requirements of applicable law, including, if applicable, requirements regarding implementation plans. Following rulemaking procedures mandated by law on the proposal, the director shall take such action on the proposal as is lawful and reasonable.

(1) A single variance issued pursuant to this rule for an air contaminant source may provide the applicant relief from more than one emission limitation.

(2) Except as otherwise appropriate under paragraph (C) of this rule, an approved compliance schedule shall be incorporated into any variance granted.

(3) Each variance issued pursuant to this rule and each variance or PTIO issued to another source pursuant to paragraph (C)(2)(d) of this rule shall include as terms and conditions a specified emission limit for each air contaminant for which a variance is granted and test methods for demonstrating compliance with such emissions limits.

(4) In addition to the other registration and reporting requirements of all air contaminant sources, the holder of a variance which contains a compliance schedule shall file reports every two months or as otherwise required by the Ohio environmental protection agency. Such reports shall be signed by the applicant for the variance. These reports shall demonstrate to the satisfaction of the director that the source for which the variance was issued is making consistent progress and has met all interim deadlines specified in the compliance schedule or specified by the Ohio environmental protection agency.

(H) The possession of a variance shall not relieve the holder of responsibility to comply with all other applicable law and rules of the Ohio environmental protection agency.

(I) Variances may be revoked pursuant to paragraph (B)(5) of rule 3745-31-07 of the Administrative Code.