

3745-77-08 **Permit issuance, modifications, revisions, revocations, reopenings, and termination.**

[Comment: For dates and availability of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph ~~(SS)~~(TT) of rule 3745-77-01 of the Administrative Code titled "~~Referenced~~referenced materials."]

(A) Action on application.

- (1) A Title V permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:
 - (a) The director has received a complete application for a Title V permit, permit modification, or permit renewal, as determined in accordance with rule 3745-77-05 of the Administrative Code~~;~~.
 - (b) Except for modifications qualifying for minor permit modification procedures under paragraphs (C)(1) and (C)(2) of this rule, the director has complied with the requirements for public participation under paragraph (G) of this rule and the procedural requirements of division (F) (1) of section 3704.036 of the Revised Code~~;~~.
 - (c) The director has complied with the requirements for notifying and responding to affected states under paragraph (B) of rule 3745-77-09 of the Administrative Code~~;~~.
 - (d) The director determines that the conditions of the permit provide for compliance with all applicable requirements, and the requirements of this chapter~~;~~ ~~and~~.
 - (e) The administrator has received a copy of the proposed permit and any notices required under rule 3745-77-09 of the Administrative Code, and has not objected to issuance of the permit under paragraph (C) of rule 3745-77-09 of the Administrative Code within the time specified therein.
- (2) Following review of a Title V application submitted in accordance with this chapter, the director shall issue a draft permit or denial, permit modification or denial, or permit renewal or denial for public comment, in accordance with paragraph (G) of this rule. The draft shall be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The director shall send this statement of basis to the administrator, to the applicant, and to any other person who requests it.

- (3) Following the completion of the public comment period on the draft permit, the director shall send the applicant a preliminary proposed permit that incorporates all changes the director proposes to make to the draft permit and the director's responses to comments received on the draft permit. Within fourteen days after receipt of a preliminary proposed permit, the applicant may request an informal conference with the director. In the event of such request from the applicant, the director shall hold a conference with the applicant on the preliminary proposed permit prior to the submission of a proposed permit to the administrator pursuant to paragraph (A)(4) of this rule.
- (4) Following completion of the public comment period and review of the preliminary proposed permit as provided in paragraphs (A)(2) and (A)(3) of this rule, the director shall prepare and submit to the administrator a proposed Title V permit, permit modification, or permit renewal. Any denial of an application for a Title V permit, permit modification, or permit renewal shall be made in compliance with division (F)(1) of section 3704.036 of the Revised Code.
 - (a) The proposed Title V permit or proposed denial, modification, or renewal shall be submitted to the administrator no later than forty-five days preceding the deadline for final action under paragraph (A)(6) of this rule and shall contain all applicable requirements that have been promulgated and made applicable to the source as of the date of issuance of the draft permit.
 - (b) If new applicable requirements are promulgated or otherwise become newly applicable to the source following submission of the proposed permit to the administrator but before issuance of the final permit, the director shall extend or reopen the public comment period to solicit comment on additional permit provisions to implement the new applicable requirements.
- (5) The following actions shall occur after review by the administrator:
 - (a) Upon receipt of notice that the administrator will not object to a proposed Title V permit, permit modification, or permit renewal that has been submitted for the administrator's review pursuant to this rule, the director shall issue the Title V permit, permit modification, or permit renewal forthwith and in any event no later than the tenth day following receipt of the notice from the administrator.
 - (b) Upon the passage of forty-five days after submission of a Title V permit, permit modification, or permit renewal for the administrator's review, and if the administrator has not notified the director of an objection to the

proposed permit, the director shall issue the permit, permit modification, or permit renewal forthwith and in no event later than the fifty-fifth day following submission for review by the administrator.

- (c) If the administrator objects to the proposed Title V permit, permit modification, or permit renewal, the director shall consult with the administrator and the applicant and shall submit a revised proposed Title V permit to the administrator within ninety days after the date of the administrator's objection, unless the director determines that one or more revisions sought by the administrator are inconsistent with applicable statutes or regulations. In that case, the director may so inform the administrator within ninety days following the date of the objection and decline to make those particular revisions. In no event shall the director issue a final Title V permit over the administrator's objection.
- (6) Except as provided in this paragraph or in paragraph (C)(1)(e) or (C)(2)(d) of this rule, the director shall take final action on each initial or renewal application or application for a modification within eighteen months after receiving a complete application. For each such application that the director does not propose to deny, the director shall submit a proposed Title V permit, modification, or renewal to the administrator no later than forty-five days before the deadline for final action established in this paragraph.
- ~~(a) The director shall take final action on at least one third of all initial permit applications annually during the first two years and shall take action on the remainder of the initial applications in the third year following approval of the Title V permit program.~~
- ~~(b)~~(a) The director shall take action on any permit, permit modification, or permit renewal application submitted in compliance with regulations promulgated under Titles IV or V of the act for the permitting of affected sources under the acid rain program within the time specified in those regulations.
- ~~(c)~~(b) The director may suspend action on a pending Title V permit application if the applicant has made appropriate application to the director pursuant to Chapter 3745-31 or 3745-35 of the Administrative Code to establish federally enforceable limits that would exempt the source in question from the requirement to obtain a Title V permit under rule 3745-77-02 of the Administrative Code until after the director has taken final action on the application under Chapter 3745-31 or 3745-35 of the Administrative Code.

~~(d)~~(c) The director shall take action on any complete permit application containing any early reduction demonstration under Section 112(i)(5) of the act within nine months of receipt of the complete application.

~~(e)~~(d) Pursuant to division (F) of section 3704.036 of the Revised Code, the director's failure to take final action on a Title V permit renewal or modification application within the times prescribed by this chapter, may be appealed to the environmental review appeals commission under section 3745.04 of the Revised Code.

(B) Administrative permit amendments.

(1) An administrative permit amendment may be made by the director consistent with all of the following:

(a) The director shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states, provided that it designates any such permit revisions as administrative permit amendments made pursuant to this paragraph.

(b) The director shall submit a copy of the revised permit to the administrator.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

~~(2) Permit shield. Administrative permit amendments defined in paragraph (C)(5) of rule 3745-77-01 of the Administrative Code shall be covered by the permit shield in paragraph (F) of rule 3745-77-07 of the Administrative Code upon the director's final action granting a request for such administrative permit amendment.~~

~~(3)~~(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the act.

(C) Permit modification.

A permit modification is any revision to a Title V permit that cannot be accomplished under the administrative permit amendment provisions under paragraph (B) of this rule. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that fulfill all of the following:

(i) Do not violate any applicable requirement~~s~~;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit~~s~~;

[Comment: Because of the size limitations on insignificant emissions units, the consequences of a change in monitoring at an insignificant emissions unit would be quite small. Such a change is not significant and, therefore, is eligible for minor modification procedures. In addition, a relaxation in a recordkeeping and reporting requirement for a best available technology emission limitation or operational restriction for an insignificant emissions unit does not require the use of the significant modification process. Such a relaxation to the recordkeeping or reporting requirements would have small consequences, and such a change could be made using the permit modification procedures stated in this paragraph.]

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis~~s~~;

[Comment: Case-by-case determinations of best available technology emission limitations, operational restrictions, or other standards for insignificant emissions units are created by the permit to install and then are incorporated into the Title V permit. The Title V permit does not create or change the best available technology emission limitation, operational restriction or other standard; the best available technology emission limitation, operational restriction or other standard may be created and changed only by the permit to install. Therefore, the Title V permit does not "require or change" such an emission limit, operational restriction or other standard. Accordingly, in such case the minor modification procedures may be used.]

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include either of the following:

any notice required under paragraph (B)(2) of rule 3745-77-09 of the Administrative Code to the administrator.

(e) Timetable for issuance. Within ninety days of the director's receipt of an application under minor permit modification procedures, or fifteen days after the end of the administrator's forty-five day review period under paragraph (C) of rule 3745-77-09 of the Administrative Code, whichever is later, the director shall do one of the following:

(i) Issue the permit modification as proposed~~;~~.

(ii) Propose to deny the permit modification application that will be effective in thirty days unless an adjudication hearing is requested~~;~~.

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures under paragraph (C)(3) of this rule~~;~~~~or~~.

(iv) Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by paragraph (A) of rule 3745-77-09 of the Administrative Code.

(f) Ability to make changes. The applicant may make the change proposed in its minor permit modification application immediately after it files such application. After the applicant makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in paragraph (C)(1)(e) of this rule, the owner or operator of the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the owner or operator of the source need not comply with the existing permit terms and conditions the applicant seeks to modify. However, if the owner or operator of the source fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the applicant seeks to modify may be enforced against the source.

(g) Permit shield. The permit shield under paragraph (F) of rule 3745-77-07 of the Administrative Code shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications.

Consistent with this paragraph, the director may modify the procedure outlined in paragraph (C)(1) of this rule to process groups of an applicant's applications

for certain modifications eligible for minor permit modification processing including modifications for insignificant emissions units subject to one or more applicable requirements.

(a) Criteria. Group processing of modifications may be used only for those permit modifications that meet both of the following:

- (i) Meet the criteria for minor permit modification procedures under paragraph (C)(1)(a) of this rule; ~~and.~~
- (ii) Collectively are below ten per cent of the emissions allowed by the permit for the emissions unit for which the change is requested, below twenty per cent of the applicable definition of major source in rule 3745-77-01 of the Administrative Code, or below five TPY, whichever is least.

(b) Application. An applicant requesting the use of group processing procedures shall meet the requirements of rule 3745-77-03 of the Administrative Code and shall include all of the following in the application:

- (i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs; ~~;~~
- (ii) The source's suggested draft permit; ~~;~~
- (iii) Certification by a responsible official, consistent with paragraph (D) of rule 3745-77-03 of the Administrative Code, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used; ~~;~~
- (iv) A list of the applicant's other pending applications for group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (C)(2)(a)(ii) of this rule; ~~;~~
- (v) Certification, consistent with paragraph (D) of rule 3745-77-03 of the Administrative Code that the applicant has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification; ~~and.~~
- (vi) Completed applications, in the form and manner prescribed by the director to notify the administrator and affected states as required under rule 3745-77-09 of the Administrative Code.

- (c) Administrator and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (C)(2)(a)(ii) of this rule, whichever is earlier, the director promptly shall meet the obligation under paragraphs (A)(1) and (B)(1) of rule 3745-77-09 of the Administrative Code to notify the administrator and affected states of the requested permit modifications. The director shall send any notice required under paragraph (B)(2) of rule 3745-77-09 of the Administrative Code to the administrator.
- (d) Timetable for issuance. The provisions of paragraph (C)(1)(e) of this rule shall apply to modifications eligible for group processing, except that the director shall take one of the actions specified in paragraphs (C)(1)(e)(i) to (C)(1)(e)(iv) of this rule within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five day review period under paragraph (C) of rule 3745-77-09 of the Administrative Code, whichever is later.
- (e) Ability to make changes. The director may allow the owner or operator of the source to make the changes proposed for group processing in the minor permit modification application immediately after the applicant files such the source makes the changes allowed by the preceding sentence, and until the director takes any of the actions specified in paragraphs (C)(1)(e)(i) to (C)(1)(e)(iv) of this rule, the owner or operator of the source must comply with both the applicable requirements governing the changes and the proposed permit terms and conditions. During this time period, the owner or operator of the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the owner or operator of the source fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the applicant seeks to modify may be enforced against the owner or operator of the source.
- (f) Permit shield. The permit shield under paragraph (F) or rule 3745-77-07 of the Administrative Code shall not extend to group processing of minor permit modifications.

(3) Significant modification procedures.

- (a) Criteria. Significant modification procedures shall be used for applicants requesting permit modifications that do not qualify as minor permit

modifications or as administrative amendments, including either of the following:

- (i) Significant change in existing monitoring permit terms or conditions;
~~or.~~
 - (ii) A relaxation of reporting or recordkeeping permit terms or conditions, except for those relating to best available technology emission limitations, operational restrictions or other standards for insignificant emission units, which are subject to the minor modification procedures and comments set forth at paragraph (C) (1) of this rule.
- (b) No permit condition that is rendered inapplicable as a result of a modification shall be construed to prohibit the modification.
 - (c) Significant permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the administrator, as they apply to permit issuance and permit renewal. The director shall complete review on a majority of significant permit modifications within nine months after receipt of a complete application.
 - (d) A complete application for a significant permit modification shall be filed within twelve months after commencing operation of the modified source, provided that where an existing Title V permit would prohibit construction or operation of such modified source, a Title V permit revision must be obtained before operation of such modified source. This paragraph shall not affect the applicability of Chapter 3745-31 of the Administrative Code to any source that is required to have a permit to install under that chapter.

(D) Reopening for cause.

- (1) Causes for reopening prior to permit expiration. Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
 - (a) Additional applicable requirements under the Act become applicable to a major Title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is

required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to paragraph (E)(1) of this rule.

- (b) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.
- (c) The director or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
- (d) The administrator or the director determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Reopening procedure.

Procedures to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance under paragraph (A) of this rule and, except as provided in paragraph (B)(3) of this rule, shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Advance notice to permittee.

Reopenings under paragraph (D)(1) of this rule shall not be initiated before a notice of such intent is provided to the owner or operator of the Title V source by the director at least thirty days in advance of the date that the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

(4) Action by the administrator.

Within ninety days, or longer if the administrator extends this period, after receipt of notification by the administrator that the administrator has found cause to exist to revoke, modify, or revoke and reissue a permit pursuant to paragraph (D)(1) of this rule, the director shall forward to the administrator a proposed determination of revocation, modification, or revocation and reissuance, as appropriate. Within ninety days receipt of the administrator's objection to a proposed determination, the director shall address and act upon the administrator's objection unless the director determines that one or more

revisions sought by the administrator are inconsistent with applicable statutes or regulations.

(E) Renewal applications and processing.

- (1) If the director fails to take a final action on the application to renew a Title V permit prior to expiration of the Title V permit and the owner or operator of the source filed the application in accordance with paragraph (E) of rule 3745-77-04 of the Administrative Code and such application was deemed complete in accordance with paragraph (A) of rule 3745-77-05 of the Administrative Code. All provisions and authorizations of the expired permit shall remain in effect until the director's final action on the pending renewal application. If a Title V operating permit expires after a timely and complete renewal application has been filed in accordance with paragraph (E) of rule 3745-77-04 of the Administrative Code with the director, all authorizations and provisions under the permit shield of the expired permit shall remain in effect until the director's final action on the pending renewal application.
- (2) If a permit has been reopened for cause within two years of the expiration of the permit, the owner or operator of the source may elect to use the reopening procedure to renew the entire permit.

(F) Revocation.

- (1) The director may revoke a Title V permit if the director determines that any of the federally enforceable conditions, terms, or standards of paragraph (A) (7)(a) of rule 3745-77-07 of the Administrative Code or any other applicable requirement have been or will be violated. Where the director determines that such violations occurred only at individual emission units covered by the Title V permit, the director may revoke the Title V permit and reissue it for only those emission units that are not in violation.
- (2) The director shall afford a prompt hearing to any permit holder whose Title V permit is revoked in the manner prescribed in Chapter 3745-47 of the Administrative Code.
- (3) Revocation and reissuance of a Title V permit shall be final thirty days after service of notice to the permit holder.
- (4) A Title V permit that has been revoked shall be surrendered forthwith to the director.

(G) Public participation.

Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall follow the procedures in this paragraph for public comment and hearing.†

- (1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located and in the "Ohio EPA Weekly Review"; to persons on a mailing list developed by the director, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.‡
- (2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the director; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to Section 503(e) of the act, except for information entitled to confidential treatment pursuant to Section 114(c) of the act, and all other materials available to the director that are relevant to the permit decision; a brief description of the comment procedures required by this chapter; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).‡
- (3) The director shall provide such notice and opportunity for participation by affected states as is provided for by rule 3745-77-09 of the Administrative Code.‡
- (4) The director shall provide at least thirty days for public comment and shall give notice of any public hearing at least thirty days in advance of the hearing.‡
- (5) The director shall keep a record of the commenters and also of the issues raised during the public participation process and such records shall be available to the public.

(H) Termination.

- (1) Other than upon Title V permit expiration, a Title V permit, or terms and conditions within a Title V permit that apply to a specific emissions unit or activity level, terminate when any of the following occur:
 - (a) The responsible official of a permittee submits to the Ohio environmental protection agency and the Ohio environmental protection agency receives

a document certifying permanent shutdown of the Title V facility or, as applicable, the specific emissions unit within the facility;

- (b) A change is made at the Title V facility such that the facility is no longer a Title V source pursuant to paragraph (B) of rule 3745-77-02 of the Administrative Code, and the owner or operator submits to the director a complete application for a permit-to-install and operate (PTIO) that demonstrates the facility is no longer a Title V source under paragraph (B) of rule 3745-77-02 of the Administrative Code or is exempt pursuant to paragraph (C) of rule 3745-77-02 of the Administrative Code from the requirements to obtain a Title V permit, and the director has issued a PTIO pursuant to Chapter 3745-31 of the Administrative Code for all air contaminant sources at the facility for which a PTIO is required if the sources are not covered by a Title V permit;
 - (c) The owner or operator submits to the director a complete application for a PTIO requesting federally-enforceable restrictions (i.e. application for a federally enforceable PTIO (FEPTIO)) that demonstrates upon issuance of an FEPTIO the facility will no longer be Title V source under paragraph (B) of rule 3745-77-02 of the Administrative Code because it will be exempt pursuant to paragraph (C)(4) of rule 3745-77-02 of the Administrative Code from the requirements to obtain a Title V permit, and the director has issued the FEPTIO and, as needed, a PTIO, for all air contaminant sources at the facility for which a FEPTIO and, if applicable, a PTIO is required if the sources are not covered by a Title V permit.
- (2) Provided a complete application for a PTIO or FEPTIO is filed under paragraph (H)(1)(b) or (H)(1)(c) of this rule six months prior to expiration of the Title V permit, if the director fails to take final action on the application, the owner or operator is permitted by this rule to continue to operate the facility in accordance with all terms and conditions and authorizations of the expired Title V permit until the director takes final action on the application.
- (3) An owner or operator shall submit to the Ohio environmental protection agency by no later than the date required by the terminated Title V permit or by the terms and conditions of the expired Title V permit applied to the source under paragraph (H)(2) of this rule, any quarterly deviation reports, semiannual deviation reports, annual compliance certifications, or similar report or certification, for the last period during which the Title V permit applied to the source, or during which the terms and conditions of the expired Title V permit applied to the source under paragraph (H)(2) of this rule.

Effective:

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Certification

Date

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