

RULE SYNOPSIS

Proposed/Refiled rule language for
Ohio Administrative Code (OAC) Rules 3745-31-34 and 3745-77-11
to incorporate the GHG Tailoring Rules

The proposed rule language in new OAC rules 3745-31-34 and 3745-77-11 are intended to adopt standards for the state of Ohio that are consistent with, and no more stringent than, the Federal Greenhouse Gas Tailoring Rule, and limit authority to permit greenhouse gases to levels established in the federally approved State Implementation Plan.

Legislative Background

On December 15, 2009, USEPA published the greenhouse gas (GHG) endangerment finding (74 FR 66496). The finding stated that "The Administrator finds that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations." Based on this finding, states must now take GHG's into account when issuing permits under the Prevention of Significant Deterioration (PSD) and Title V programs of the Clean Air Act (CAA or Act).

On June 3, 2010, USEPA issued the GHG Tailoring rule (75 FR 31514). The GHG Tailoring rule adjusts the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD and Title V programs of the CAA. The GHG Tailoring rule is necessary because without it PSD and Title V requirements would apply, as of January 2, 2011, at the 100 or 250 tons per year (tpy) levels provided under the CAA, greatly increasing the number of required permits, imposing undue costs on small sources, overwhelming the resources of permitting authorities, and severely impairing the functioning of Ohio's PSD and Title V permitting programs.

On December 30, 2010, USEPA published the "narrowing" rules limiting State Implementation Plan authority to issue PSD and Title V permits for greenhouse gases to the level established in the GHG tailoring rule identified above (75 FR 82536 and 75 FR 82254 respectively).

Ohio is adopting these rules as part of our federally approved PSD and Title V permitting programs to allow the state to issue permits at the applicability limits provided in the GHG Tailoring rule.

Changes Based on Comments Received

On January 5, 2011, these rules were proposed to the Joint Committee on Agency Rule Review (JCARR) to permanently adopt rule language adopted via Executive Order 2010-15S. As part of the proposal, a 30-day public comment period ending February 11, 2011 and a public hearing, also on February 11, 2011 were held.

Based on comments received during the comment period and at the hearing, Ohio EPA determined that changes to the rule language were needed for clarification of portions of the rules. The changes were made and the rules refiled with the JCARR. The following is a list of changes made to the proposed rule language based on the comments received:

OAC Rule 3745-31-34

1. Added a leading comment to clarify what gases USEPA considers "greenhouse gases" under the federal greenhouse gas tailoring rule.
2. OAC rule 3745-34-31(A): added text to clarify when modifications to existing sources trigger greenhouse gas permitting requirements .
3. Clarified that the Director is authorized to issue greenhouse gas permits in accordance with the levels authorized in federal rules.
4. Clarified in various places that greenhouse gas permitting applies to "major" stationary sources. "Major stationary source" is an existing defined term in OAC rule 3745-31-01.
5. Clarified that the permitting thresholds referenced in this rule target greenhouse gas permitting requirements by adding the words "greenhouse gas" in front of the words "permitting thresholds"
6. OAC rule 3745-31-34(C) : clarified that OAC rule 3745-31-34 or permit terms enacting this rule cease to be effective to the extent that federal actions limiting or eliminating regulation of greenhouse gases occurs.
7. Reorganized formatting. Unnumbered paragraph under paragraph (C) now identified as paragraph (D).
8. Added a new paragraph (E) to clarify that specific other provisions, including State Best Available Technology (BAT) requirements do not apply to greenhouse gas sources as part of regulating greenhouse gases.
9. Added the phrase "an air contaminant"
10. In OAC rule 3745-31-34(G)(2) : Added the citation referencing the federal greenhouse gas tailoring rule.

OAC rule 3745-77-11

1. Added a leading comment to clarify what gases USEPA considers "greenhouse gases" under the federal greenhouse gas tailoring rule.

2. Clarified in various places that greenhouse gas permitting applies to "major" sources. "Major source" is an existing defined term in OAC rule 3745-77-01.
3. OAC rule 3745-77-11(D) : clarified that OAC rule 3745-77-11 or permit terms enacting this rule cease to be effective if federal actions eliminating regulation of greenhouse gases occurs.
4. In OAC rule 3745-77-11(F)(2) Added the citation referencing the federal greenhouse gas tailoring rule.

Changes to Emergency Rule Language

Note: This information is presented for historic value. The changes described were the original changes to the emergency rule language as proposed to the JCARR on January 5, 2011. Please note that the changes below have not been removed from the rules, but may be superseded by a change made based on comments.

On December 30, 2010, these rules were adopted as emergency rules via the Governor's executive order 2010-15S. The rule language, as proposed to JCARR will permanently adopt the emergency language and includes minor changes and additions to clarify the emergency rule language and fix a typo in the applicable date of the rules. Specific changes to each rule are as follows:

OAC rule 3745-31-34

The emergency rule for OAC rule 3745-31-34 had a typographical error in paragraph (A) indicating that sources became subject to greenhouse gas permitting requirements on or after January 2, 2010. This typographical error has been corrected to January 2, 2011.

Paragraph (E)(2)(e) was modified to reference the published "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule" published on December 30, 2010 in the federal register. The emergency rule had referenced the date United States Environmental Protection Agency Administrator had signed the rules into effect on December 23, 2010.

OAC rule 3745-77-11

For clarity, Federal Register references were added to each of the federal actions identified in paragraph (A).

A new paragraph (C) was inserted and the subsequent paragraphs and paragraph references were re-lettered. The language inserted provides major sources that would otherwise become subject to Title V greenhouse gas permitting requirements solely on

the basis of the potential greenhouse gas emissions as of July 1, 2011 or later, the ability to apply for voluntary restrictions to avoid greenhouse gas Title V permitting requirements that come into effect under Step 2 of the federal greenhouse gas tailoring rule and as authorized in the "narrowing" rule which was published in the Federal Register after the emergency rules had been signed by the Governor, on December 30, 2010. Ohio EPA also did not include the new paragraph (C) rule language in the emergency rules because the rules will not be effective on July 1, 2011 when the greenhouse gas tailoring rule Step 2 requirements go into effect.

Re-lettered paragraph (F)(2)(e) was modified to reference to the published " Action to Ensure Authority to Implement Title V Permitting Programs under the Greenhouse Gas Tailoring Rule " published on December 30, 2010 in the federal register. The emergency rule had referenced the date United States Environmental Protection Agency Administrator had signed the rules into effect on December 23, 2010.