Mr. Kurt Thiede
Regional Administrator
U.S. EPA Region V
77 W. Jackson Blvd.
Chicago, IL 60604

Re: Request for Approval of Ohio Revised Code (ORC) Installation Permit Expiration Provision into Ohio's State Implementation Plan (SIP)

Dear Mr. Thiede:

In 2009, the Ohio General Assembly modified portions of ORC 3704.03 to update the requirements for the expiration of air pollution installation permits. Specifically, Amended House Bill 1 (H.B. 1) amended ORC 3704.03 by inserting paragraph (F)(2)(b) which prescribes that installation permits are initially effective for 18 months, but the 18-month time period can be modified for cause as described in the law. This portion of the law became effective October 16, 2009.

The majority of the provisions of paragraph (F)(2)(b) of ORC 34704.03 are contained in Ohio Administrative Code (OAC) rule 3745-31-07 (effective May 20, 2014) which was most recently approved into the SIP on August 24, 2015. See 80 FR 36477. However, Ohio EPA recently recognized that paragraph (F)(2)(b)(iv) of the current ORC 3704.03 language is not contained in OAC rule 3745-31-07. Ohio EPA is requesting via this letter that U.S. EPA approve paragraph (F)(2)(b)(iv) of ORC 3704.03 as a part of Ohio’s SIP.

Support for Inclusion of this Provision

40 CFR § 52.21 - Prevention of significant deterioration (PSD) of air quality contains the PSD rule USEPA uses when a state does not have a fully approved program. Since Ohio EPA’s PSD program is fully approved, 52.21 does not apply in Ohio. However, it can be used to show how USEPA’s PSD program allows for similar provisions to what Ohio EPA is requesting.

40 CFR 52.21(r) Source Obligation reads as follows:

\[(r) \text{ Source obligation.} \]
\[(1) \text{ Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the} \]
terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

Subparagraph (r)(2) describes the time that the owner/operator must begin construction of a PSD source including the requirement that construction must start within 18 months after receipt of approval. The bold text states that the USEPA administrator can extend the 18-month clock if the Administrator is satisfied the extension is justified.

Ohio EPA’s parallel ORC requirements allows the Director to extend the time in a similar manner. The only difference is that the ORC is narrower in scope as to when a permit can be extended. The ORC language is as follows:

(b) An air contaminant source that is the subject of an installation permit shall be installed or modified in accordance with the permit not later than eighteen months after the permit’s effective date at which point the permit shall terminate unless one of the following applies:

(i) The owner or operator has undertaken a continuing program of installation or modification during the eighteen-month period.
(ii) The owner or operator has entered into a binding contractual obligation to undertake and complete within a reasonable period of time a continuing program of installation or modification of the air contaminant source during the eighteen-month period.
(iii) The director has extended the date by which the air contaminant source that is the subject of the installation permit must be installed or modified.
(iv) The installation permit is the subject of an appeal by a party other than the owner or operator of the air contaminant source that is the subject of the installation permit, in which case the date of termination of the permit is not later than eighteen months after the effective date of the permit plus the number of days between the date in which the permit was appealed and the date on which all appeals concerning the permit have been resolved.
(v) The installation permit has been superseded by a subsequent installation permit; in which case the original installation permit terminates on the effective date of the superseding installation permit.

Under Ohio’s ORC, the ability to construct is also limited to 18 months. Under (b)(i-v), Ohio’s law describes several ways that the 18-month clock can either be met or extended.
The bold text is that which is currently not included as a specific scenario under which the Director may provide an extension. These methods described all fit with the broad statement in the federal rules, “upon a satisfactory showing that an extension is justified.”

Please note, this SIP revision request does not impact the amount of emissions associated with any law, rule or permit and so the change does not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Clean Air Act (CAA) Section 171), or any other applicable requirement of the CAA. Therefore, a CAA Section 110(l) analysis is not needed.

An official copy of ORC 3704.03 as enacted in H.B. 1 on July 17, 2009 has been included as evidence of the date of adoption as well as the effective date of the regulations (attachment 1). The copy is included as evidence that the State has adopted the body of regulations in final form. Ohio EPA is also including a copy of the law as it appears in the Revised Code itself (attachment 2). Ohio EPA is only request paragraph (F)(2)(b) of ORC 3704.03 be incorporated into the SIP and not the entirety of ORC 3704.03.

Ohio published notification for the public comment period, including an opportunity to request a public hearing, concerning the draft SIP submittal in statewide distributed publications on <insert date>.

The public comment period closed on <insert date>. No public hearing was held because no requests were received.

We would appreciate if U.S. EPA would expedite the review of this material. Please contact Bob Hodanbosi if you have any questions about this submittal.

Sincerely,

Laurie A. Stevenson
Director, Ohio Environmental Protection Agency

cc: Bob Hodanbosi, Chief Division of Air Pollution Control

Attachment
Attachment 1

Certified Copy of H.B. 1 of the 129th Legislature
Attachment 2

Copy of Statute Language