



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0559; FRL-10019-84-Region 5]

Air Plan Approval; Ohio; Ohio NSR Permit Timing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revised paragraph of the Ohio Revised Code (ORC) into Ohio's state implementation plan (SIP) under the Clean Air Act (CAA). This revision will allow for the extension of an installation permit which is the subject of an appeal by a party other than the owner or operator of the air contaminant source. The extension will allow the date of termination of the permit to be no 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 the appeal was resolved.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0559 at <http://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Charmagne Ackerman, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0448, ackerman.charmagne@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What Action is EPA Taking?

EPA is proposing to approve paragraph (F)(2)(b)(iv) of ORC 3740.03 into the Ohio SIP. On October 27, 2020, EPA received a

submittal from the Ohio Environmental Protection Agency (OEPA) requesting the approval of the ORC Permit Expiration Provision at ORC 3740.03 (F) (2) (b) (iv) into Ohio's SIP. 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, the modification included 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 ORC became effective October 16, 2009.

The majority of the provisions in ORC 3704.03 paragraph (F) (2) (b) are contained in Ohio Administrative Code (OAC) rule 3745-31-07, which was most recently approved into the SIP on August 24, 2015 (80 FR 36477). However, paragraph (F) (2) (b) (iv) is not part of OAC 3745-31-07, and OEPA has requested that the paragraph be approved into the SIP.

On January 12, 2021, OEPA submitted a letter to further clarify several implementation aspects of the submittal, as discussed below.

Paragraph (F) (2) (b) (iv) allows for an installation permit to be extended beyond 18 months if the installation permit is subject to appeal by a party other than the owner or operator of the air contaminant source that is subject of the installation permit. In the case as described, the termination date of the installation permit will not be later than 18 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. The Federal Prevention of Significant Deterioration (PSD) rules at 40 CFR 52.21(r)(2) describes the timing that the owner/operator must begin construction of a PSD source including the requirement that the construction must start within 18 months after receipt of approval. Subparagraph (r)(2) also stated that the EPA Administrator may extend the 18-month time period upon a satisfactory showing that an extension is justified. EPA finds that the language in paragraph (F)(2)(b)(iv) is consistent with the Federal PSD regulations.

The January 12, 2021, letter from OEPA provided assurance that in the instance of a lengthy appeal process, OEPA fully maintains its discretion to re-assess the permit to ensure that it is consistent with Federal regulations and guidance. Additionally, OEPA is able to utilize existing mechanisms on its website to notify the public of the extended permit. These clarifications ensure that the provisions are consistent with Federal regulations, and thus, approvable. Since it only affects the timing associated with an affected installation permit's termination date, the requested SIP revision does not impact the amount of emissions associated with any law, rule, or permit. Thus, the revision does not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA Section 171), or any other

applicable requirements of the CAA. Therefore, a detailed CAA Section 110(1) analysis is not necessary.

II. Incorporation by Reference.

In this action, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio Revised Code section 3704.03(F)(2)(b)(iv), effective October 16, 2009, discussed in Section I of this action. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section of this preamble for more information).

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 4, 2021.

Cheryl Newton,
Acting Regional Administrator, Region 5.