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3745-31-22 **Nonattainment provisions - conditions for approval.**

[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 "~~Incorporation by Reference~~"-at the end of rule 3745-31-01 of the ~~Administrative Code~~ paragraph (KKKKKK) of rule 3745-31-01 of the Administrative Code entitled, "referenced materials.":]

(A) Conditions for permit-to-install approval.

If the director finds that a major stationary source or major modification for which a permit-to-install application has been submitted would be constructed in an area designated in 40 CFR 81.336 as nonattainment for an air pollutant for which the major stationary source or major modification is major, approval may be granted only if the following conditions are met:

(1) Lowest achievable emission rate (LAER).

The major stationary source or major modification is required to meet an emission limitation that specifies the LAER for such stationary source.

If the director determines that technological or economic limitations on the application of measurement methodology to a particular class of stationary sources would make the imposition of an enforceable numerical emission standard infeasible, the director may instead prescribe a design, operational, or equipment standard. Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained~~(, or that the operational conditions will be properly performed)~~, so as to continuously achieve the assumed degree of control.

The LAER is required only for those major nonattainment air pollutants for which the increased allowable emissions exceed the significant emission rates, although the director may choose to require LAER for air pollutants that do not exceed these values.

The new emission limitations for the new stationary source as well as any existing stationary sources affected must be federally enforceable.

(2) Compliance certification.

The applicant ~~must~~ shall certify that all existing major stationary sources owned or operated by the applicant~~(, or any entity controlling, controlled by, or under common control with the applicant)~~, in Ohio as the proposed major stationary source or major modification are in compliance with all applicable emission

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limitations and standards under the Clean Air Act ~~(, or are in compliance with an expeditious schedule which is federally enforceable or contained in a court decree).~~

(3) Emission offsets.

(a) Emission reductions (offsets) from existing air contaminant sources in the area of the proposed major stationary source ~~(, whether or not under the same ownership).~~ are required such that there will be reasonable progress, as determined by the director, toward attainment of the applicable national ambient air quality standard.

(b) Only intra air pollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against sulfur dioxide reductions) except interprecursor offsetting is permitted for PM2.5 emissions in accordance with paragraph (D) of rule 3745-31-26 of the Administrative Code.

(c) Emission offsets must meet the baseline limitations of rule 3745-31-24 of the Administrative Code, the location limitations of rule 3745-31-25 of the Administrative Code, and the offset ratio limitations of rule 3745-31-26 of the Administrative Code.

(d) Emission offsets are required only for those air pollutants for which the increased allowable emissions exceed the significant emission rates.

~~(e) Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a clean unit or a project as a PCP cannot be used as offsets.~~

~~(f) Decreases in actual emissions occurring at a clean unit cannot be used as offsets, except as provided in paragraphs (A)(8) and (A)(10) of rule 3745-31-30 of the Administrative Code. Similarly, decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in paragraph (B)(6)(d) of rule 3745-31-31 of the Administrative Code.~~

~~(g)~~(e) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the major modification and the actual emissions before the modification for each emissions unit.

(4) Net air quality benefit.

The emission offsets must provide a positive net air quality benefit in the affected area pursuant to rule 3745-31-25 of the Administrative Code.

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Atmospheric dispersion modeling is not necessary for VOCs and nitrogen oxides in ozone nonattainment areas. Instead, complying with the requirements of paragraphs (A)(1) to (A)(3) of this rule and rule 3745-31-25 of the Administrative Code will be considered adequate to meet this condition.

(5) Reasonable further progress.

Permits-to-install may be issued if the director determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the applicable nonattainment areas, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent reasonable further progress as defined in Section 171 of the Clean Air Act.

(B) Exemptions from certain conditions.

(1) Fuel switch exemption.

The director may exempt the following major stationary sources or major modifications from the limitation required under paragraph (D)(1) of rule 3745-31-23 of the Administrative Code or the emission offsets required under paragraphs (A)(3) and (A)(4) of this rule:

Major stationary sources that must switch fuels due to lack of adequate fuel supplies or where a major stationary source is required to be modified as a result of new United States environmental protection agency regulations and no exemption from such regulation is available to the major stationary source.

Such exemptions may be granted only if the following applies:

- (a) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets and that such efforts were unsuccessful;
- (b) The applicant has secured all available emission offsets; and
- (c) The applicant will continue to seek the necessary emission offsets and apply them when they become available.

(2) Temporary stationary sources/portable facilities/construction emissions:

The director may exempt the following major stationary sources or major modifications from the emission offsets required under paragraphs (A)(3) and (A)(4) of this rule:

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- (a) Portable facilities that will be relocated outside of the nonattainment area after a short period of time~~;~~~~and~~.
- (b) Emissions generated from the construction phase of a new major stationary source.