

3745-31-34

Permits to install for major stationary sources and major modifications of sources emitting greenhouse gases.

[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 the "Referenced materials" section at the end of this rule.]

[Comment: "Greenhouse gases" subject to regulation as defined in 40 CFR Part 51.166 consist of the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.]

- (A) Notwithstanding any provisions in Chapter 3745-31 of the Administrative Code to the contrary, on or after January 2, 2011, permits-to-install for new major stationary sources that will emit or have the potential to emit seventy-five thousand tons or more per year of CO₂ equivalent emissions of greenhouse gases and for modifications of existing major stationary sources that will result in a significant net increase in emissions of one or more regulated NSR pollutants other than greenhouse gases and also an emissions increase and a net emissions increase of seventy-five thousand tons or more per year of CO₂ equivalent emissions of greenhouse gases shall be required as provided in this rule and only to the extent required in 40 CFR Section 51.166. After July 1, 2011, permits to install for new major stationary sources that will emit or have the potential to emit one hundred thousand tons or more per year of CO₂ equivalent emissions of greenhouse gases and for modifications of existing stationary sources that will result in an emissions increase and a net emissions increase of seventy-five thousand tons or more per year of CO₂ equivalent emissions of greenhouse gases shall be required as provided in this rule and only to the extent required in 40 CFR Section 51.166. For the purpose of this rule, "CO₂ equivalent emissions" and "greenhouse gases" shall have the same meaning as set forth in 40 CFR 51.166.
- (B) For purposes of this rule, any new stationary source for which actual CO₂ equivalent emissions of greenhouse gases do not exceed one hundred thousand tons per year after July 1, 2011, and any existing major stationary source for which the increase and net emissions increase of actual CO₂ equivalent emissions of greenhouse gases do not exceed seventy-five thousand tons per year caused by a physical change or change in the method of operation that occurs after July 1, 2011, shall be deemed to have the potential to emit below the greenhouse gas permitting thresholds set forth in paragraph (A) of this rule if the owner or operator of such source has on or before July 1, 2011 submitted a complete application for a permit to limit the potential to emit CO₂ equivalent emissions of greenhouse gases from such source to less than one hundred thousand tons per year in the case of new stationary sources and to less than seventy-five thousand tons per year in the case of modifications to existing major stationary sources unless and until the application is withdrawn or the director takes final action on the application that does not limit the potential to emit to not more than the greenhouse gas emission permitting thresholds set forth in paragraph (A) of this rule.

- (C) This rule and any terms or conditions of permits-to-install issued to major stationary sources or for major modifications regarding greenhouse gases shall cease to be effective if any of the following occurs:
- (1) Enactment of federal legislation depriving the administrator of authority, limiting the administrator's authority, or requiring the administrator to delay the exercise of authority, to regulate greenhouse gases under the Clean Air Act;
 - (2) The issuance of any opinion, ruling, judgment, order, or decree by a federal court depriving the administrator of authority, limiting the administrator's authority, or requiring the administrator to delay the exercise of authority, to regulate greenhouse gases under the Clean Air Act, including but not limited to any federal court decision staying, voiding, or invalidating the effectiveness of any of the actions of the administrator set forth in the greenhouse gas endangerment finding (74 Fed. Reg. 66496, December 15, 2009), the motor vehicle greenhouse gas tailpipe standards (75 Fed. Reg. 25324, May 7, 2010), the requirement to obtain prevention of significant deterioration permits and Title V permits as provided in the greenhouse gas tailoring rule (75 Fed. Reg. 31514, June 3, 2010, as amended 76 FR 43490, July 20, 2011), or the narrowed "State Implementation Plan" approval established in the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule" (75 FR 82536, December 30, 2010) or finding any such action, in whole or in part, to be arbitrary, capricious, or otherwise not in accordance with law; or
 - (3) Action by the president of the United States or the president's authorized agent, including the administrator, to repeal, withdraw, suspend, postpone, or stay the amendments to 40 CFR Section 51.166 or to otherwise limit or delay the Administrator's exercise of authority to require preconstruction permitting of sources of greenhouse gas emissions.
- (D) To the extent that any action or determination listed in paragraphs (C)(1) to (C)(3) of this rule requires the permitting of any stationary source of greenhouse gas emissions at levels below the permitting thresholds set forth in paragraph (A) of this rule, the permitting thresholds in paragraph (A) of this rule shall remain in effect unless and until this rule is amended or rescinded.
- (E) The following rules and paragraphs found in this chapter are among those that do not apply to greenhouse gases:

- (1) Rule 3745-31-11 of the Administrative Code, "Attainment provisions - ambient air increments, ceilings and classifications";
 - (2) Paragraphs (C)(4) and (C)(5) of rule 3745-31-12 of the Administrative Code, "Attainment provisions - data submission requirements";
 - (3) Rule 3745-31-14 of the Administrative Code, "Attainment provisions - preapplication analysis";
 - (4) Rule 3745-31-16 of the Administrative Code, "Attainment provisions - major stationary source impact analysis";
 - (5) Rule 3745-31-17 of the Administrative Code, "Attainment provisions - additional impact analysis";
 - (6) Rule 3745-31-18 of the Administrative Code, "Attainment provisions - air quality models";
 - (7) Paragraphs (C) and (D) of rule 3745-31-19 of the Administrative Code, "Attainment provisions - notice to the United States environmental protection agency"; and
 - (8) Paragraph (A)(3) of rule 3745-31-05 of the Administrative Code, "Best Available Technology (BAT)."
- (F) No permit to install shall be required due to greenhouse gas emissions from any stationary source under this chapter, and greenhouse gases shall not be deemed to be an air contaminant source subject to regulation or regulated NSR pollutants under this chapter, unless the greenhouse gas emissions from the source exceeds the permitting thresholds set forth in paragraph (A) of this rule. Nothing in this rule is intended to be, and nothing in this rule shall be interpreted to be, an "emission limitation" or "emission standard" within the meaning of section 302(k) of the Clean Air Act, or a "control requirement" within the meaning of section 193 of the Clean Air Act.
- (G) Referenced materials. This rule includes references to certain matter or materials. The text of the referenced materials is not included in this rule. Information on the availability of the referenced materials as well as the date of, and/or the particular edition or version of the referenced material is included in this rule. For materials subject to change, only the specific versions specified in this rule are referenced. Material is referenced as it exists on the effective date of this rule. Except for

subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not applicable unless and until this rule has been amended to specify the new dates.

(1) Availability. The referenced materials are available as follows:

- (a) Clean Air Act. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the act as amended in 1990 is also available in electronic format at www.epa.gov/oar/caa/. A copy of the act is also available for inspection and copying at "The State Library of Ohio."
- (b) Code of Federal Regulations. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the CFR is also available in electronic format at www.access.gpo.gov/nara/cfr/. The CFR compilations are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (c) Federal Register. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." Text of the Federal Register is also available in electronic format at www.gpoaccess.gov/fr/index.html. The Federal Register is also available for inspection and copying at most Ohio public libraries and "The State Library of Ohio."

(2) Referenced materials.

- (a) 40 CFR ~~51.116~~; "~~Data availability~~" 51.166; "Prevention of significant deterioration of air quality"; 75 FR 31606, June 3, 2010; 76 FR 43490, July 20, 2011.
- (b) 40 CFR 70.2; "Definitions"; 57 FR 32295, July 21, 1992, as amended at 66 FR 59166, Nov. 27, 2001; 69 FR 31505, June 3, 2004; 72 FR 24078, May 1, 2007; 74 FR 51438, Oct. 6, 2009; 75 FR 31514, June 3, 2010; 76 FR 43490, July 20, 2011.
- (c) Section 193 of the Clean Air Act; contained in 42 USC 7515; "General savings clause"; published January 5, 2009 in supplement II of the 2006 edition of the United States Code.

- (d) Section 302 of the Clean Air Act; contained in 42 USC 7602; "Definitions"; published January 5, 2009 in supplement II of the 2006 edition of the United States Code.
- (e) "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule"; 75 FR 31514, June 3, 2010; 76 FR 43490, July 20, 2011.

Effective:

R.C. 119.032 review dates: 03/31/2016

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3704.03(F), 3704.03(G)
Rule Amplifies: 3704.03(F), 3704.03(G) , 3704.03(A)
Prior Effective Dates: 3/31/11