

Ohio EPA has received multiple requests for the U.S. EPA comments referenced above. The comments are provided below:

The main issue is the auto-rescission language (in both the SIP submittal and the Title V submittal). The language is more inclusive and far reaching than other auto-rescission clauses that have been adopted by other states. The language creates ambiguity regarding whether and to what extent a court decision or other relevant action invalidates the SIP requirements. The language also provides insufficient public notice of potential automatic SIP revisions. New Mexico has SIP-approved auto-rescission language, and I believe Jefferson County in Kentucky does as well. I'm not sure if Jefferson County's is published in the federal register yet, but New Mexico's is located at: <http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/html/2011-18125.htm>.

Here is the New Mexico's auto-rescission SIP language:

if a **federal court** stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas **tailoring rule** (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department **only to the extent that it is enforceable by US EPA.**

There is discussion in the federal register notice in New Mexico's approval regarding their auto-rescission clause:

The portions of the submitted SIP revision at 20.2.70.7(AL)(3) NMAC and 20.2.74.7(AZ)(6) NMAC act to limit the enforceability of the definition of ``subject to regulation'' in the event of an adverse federal court determination in certain GHG-related matters. EPA received a comment regarding the effect of such court actions, and now clarifies its interpretation of these provisions in response. The provisions state that in the event of a federal court determination that invalidates or renders unenforceable the Tailoring Rule, ``the definition `subject to regulation' shall be enforceable by the Department only to the extent that it is enforceable by US EPA.'' EPA reads this provision to mean that the state will wait for and follow EPA's interpretation of the effect of such a court decision regarding the enforceability of these SIP revisions by EPA before altering its own application of that term. EPA approves the SIP on the basis of this interpretation. If a court issues such a decision, EPA intends to promptly describe the impact of the court's decision on the enforceability of its regulations.

Comment 2: Commenter is mindful of the many legal challenges to EPA's authority to regulate GHGs, and is concerned about what effect a stay, remand, or vacatur of one or all of the federal GHG-related rules would have on the New Mexico SIP revision. Commenter supports inclusion of

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``enforceability'' language at 20.2.70.7(AL)(3) NMAC and 20.2.74.7(AZ)(6) NMAC.

Response 2: As discussed above, EPA is finalizing its approval of the enforceability clause at 20.2.74.7 and interprets that clause to indicate that the state will wait for and follow EPA's interpretation of the effect of any adverse court decision regarding the enforceability of these SIP revisions. If a court acts adversely, EPA intends to promptly describe the impact of the court's decision on the enforceability of its regulations.

The other three issues with the SIP submittal are:

- 1) The rule impermissibly provides that a source can be deemed minor for GHGs if it submitted a synthetic minor permit application prior to July 1, 2011 (we already discussed this issue).
- 2) The rule fails to include mass-based GHG emission thresholds (only contains CO₂e thresholds)
- 3) The rule fails to require that a source needs to be an "anyway" source during Step 1 of the Tailoring Rule.

The other issue with the Title V submittal is similar to the first other SIP issue above, this rule includes confusing/unclear language regarding the timing of when a permit application is required to restrict GHG emissions to below the threshold. In the rule, it's regarding when a FESOP application needs to be submitted. The rule incorrectly says that a source has up to 12 months from July 1, 2011, to submit its FESOP application, whereas the source actually has up to 12 months to get the FESOP, not just apply for the permit.