TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2010 – 15S

Immediate Adoption of Rules to Adopt USEPA Permitting Thresholds for Stationary Sources Emitting Greenhouse Gases

1. **The United States Environmental Protection Agency ("USEPA") has Adopted Rules under the Federal Clean Air Act for the Issuance of Permits to Sources Emitting Greenhouse Gases.** USEPA, on June 3, 2010, adopted rules under the federal Clean Air Act ("CAA") requiring certain stationary sources of greenhouse gases (defined as carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perflourocarbons, and sulfur hexafluoride) to obtain CAA permits prior to the installation or modification of the sources, and to obtain operating permits under Title V of the CAA. The rules require CAA permits if the source to be installed or operated, or if the modification of a source, is "major" as defined by laws and regulations. The requirement to obtain CAA permits for the installation or operation of major sources emitting greenhouse gases and for the major modification of sources emitting greenhouse gases takes effect on January 2, 2011.

2. **The USEPA's "Tailoring Rule" Establishes Higher Major Source Emission Thresholds for the Permitting of Sources of Greenhouse Gases than for Sources of Other Regulated Pollutants.** USEPA has established higher emission thresholds for determining whether a source of greenhouses gases is "major" for purposes of the requirement to obtain CAA permits as compared to the thresholds for other pollutants. The rule establishing the higher threshold for establishing "major sources" of greenhouse gas emissions is known as the "Tailoring Rule". When it adopted its Tailoring Rule, USEPA explained that the higher emission thresholds are necessary to avoid imposing major source CAA permitting requirements on a far larger number of sources than would otherwise be required to obtain such permits.

3. **The higher greenhouse gas major source emission thresholds in the Tailoring Rule should be placed in Ohio EPA rules prior to January 2, 2011, to provide certainty regarding which existing and planned manufacturing plants and other greenhouse gas sources in Ohio are subject to CAA major source permitting requirements.** Adoption of the Tailoring Rule greenhouse gas thresholds in Ohio EPA rules will clearly define which sources of greenhouse gas emissions are "major", and therefore are required to obtain CAA permits. Without placing those thresholds into Ohio EPA rules, there will be uncertainty about whether the higher thresholds apply to greenhouse gases sources in Ohio. Uncertainty will be removed if the higher Tailoring Rule thresholds are incorporated into Ohio EPA rules.

4. **Procedure for Immediate Enactment of Rule Changes.** Section 119.03(F) of the Revised Code authorizes the Governor, on the request of a state agency, to suspend the normal rule-making procedures with respect to a specific rule when an emergency exists necessitating the immediate adoption, amendment, or rescission of the rule. When such determination is made, the agency may immediately adopt, amend, or rescind that rule, but the rule is valid for only ninety (90) days.

5. **Determination of an Emergency.** I believe that an emergency exists justifying the suspension of the normal rule-making process when the failure to act immediately would negatively impact the citizens of Ohio. Ohio EPA has asked me to determine, and I have determined, that failure of Ohio EPA to immediately adopt rules that incorporate the Tailoring Rule thresholds for greenhouse gas sources in Ohio before January 2, 2011, will harm Ohio's economy and place jobs at risk in the following ways:

   a) Failure to incorporate the Tailoring Rule thresholds into Ohio's rules will create uncertainty regarding whether tens of thousands of greenhouse gas sources in Ohio that emit or would emit greenhouse gases below the Tailoring Rule thresholds, but above the thresholds currently in Ohio EPA regulations for other major pollutant sources, must obtain CAA permits. That uncertainty may cause potential investors in new and/or expanded facilities in Ohio to choose locations outside of Ohio or to choose not to build new or expanded facilities that otherwise would have been sources for jobs for Ohioans;

   b) Unnecessarily subjecting such sources to CAA permitting on greenhouse emissions may cause facilities to close due to the expense and delay of obtaining CAA permits and reducing greenhouse gas emission and more generally harm Ohio's efforts to successfully compete for investment and job creation, which will result in a loss of jobs in Ohio.

I further determine that an emergency will exist because the failure to incorporate the Tailoring Rule thresholds into Ohio EPA rules would result in a greatly increased burden on Ohio EPA in issuing major source CAA permits to sources that are below the Tailoring Rule thresholds. Ohio EPA lacks the resources to manage that greatly increased workload which would result in substantial delays in Ohio businesses being able to obtain the permits they require to operate legally.

6. **Authorization for Immediate Rule Adoption and Implementation.** Ohio EPA has prepared two emergency rules, OAC 3745-31-34, regarding thresholds for the installation of new or modified sources of greenhouse gases, and OAC 3745-77-10, regarding Title V operating permits for sources of greenhouse gases. Both rules incorporate the Tailoring Rule thresholds, and both have appropriate language terminating the rules in the event that the federal rules and associated actions are invalidated, stayed, or rescinded by federal legislative, executive, or judicial action. Accordingly, the normal rule-making procedures are suspended, and Ohio EPA is authorized to adopt OAC 3745-31-34 and OAC 3745-77-10 as emergency rules that are effective immediately. The rules may be adopted by electronically filing them with the Secretary of State, the Director of the Legislative Service Commission, and Joint Committee on Agency Rule Review.

7. I signed this Executive Order on December 30, 2010, in Columbus, Ohio, and it will expire at the end of the ninetieth day it is in effect, March 29, 2011.

Ted Strickland

Ted Strickland, Governor

ATTEST:

Jennifer Brunner, Secretary of State