

RULE SYNOPSIS

Proposed rule language for
Ohio Administrative Code (OAC) Rules 3745-31-34 and 3745-77-11
to incorporate Amendments to the GHG Tailoring Rules

The proposed rule language amendments in OAC rules 3745-31-34 and 3745-77-11 are intended to update and clarify citations in the rules and to incorporate the federal language for exemption from preparing a permit for facilities that use biomass as a fuel. The amendments to this rule will make Ohio's greenhouse gas permitting rules equivalent in scope and intent to the federal rules.

Legislative Background

On December 15, 2009, USEPA published the greenhouse gas (GHG) endangerment finding (74 FR 66496). The finding stated that "The Administrator finds that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations." Based on this finding, states must now take GHG's into account when issuing permits under the Prevention of Significant Deterioration (PSD) and Title V programs of the Clean Air Act (CAA or Act).

On June 3, 2010, USEPA issued the GHG Tailoring rule (75 FR 31514). The GHG Tailoring rule adjusts the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD and Title V programs of the CAA. The GHG Tailoring rule is necessary because without it PSD and Title V requirements would apply, as of January 2, 2011, at the 100 or 250 tons per year (tpy) levels provided under the CAA, greatly increasing the number of required permits, imposing undue costs on small sources, overwhelming the resources of permitting authorities, and severely impairing the functioning of Ohio's PSD and Title V permitting programs.

On December 30, 2010, USEPA published the "narrowing" rules limiting State Implementation Plan authority to issue PSD and Title V permits for greenhouse gases to the level established in the GHG tailoring rule identified above (75 FR 82536 and 75 FR 82254 respectively).

On March 31, 2011, Ohio EPA's GHG reporting rules, OAC rules 3745-31-34 and 3745-77-11, became effective as part of Ohio's NSR and Title V permitting programs. The rules were subsequently submitted to USEPA with a request to make them part of Ohio's State Implementation Plan (SIP).

On July 20, 2011, USEPA published their "Deferral for Co2 emissions from bioenergy and other biogenic sources..." in the Federal Register (76 FR 43490). The rule defers, for 3 years, the requirement for certain facilities to apply for and obtain a permit under the tailoring rule while USEPA considers a petition from the National Alliance of Forest Owners (NAFO). Ohio is modifying our rules to include this deferral.

Amendments Being Made to the Rules

Amendments are being made to the rules in this rulemaking package as follows::

OAC Rule 3745-31-34

1. Paragraph (C)(2) is being amended by the addition of the citation, "...as amended 76 FR 43490, July 20, 2011" which incorporates the new deferral language published by USEPA in 76 FR 43490.
2. Paragraph (G)(2), various subparagraphs to this paragraph are being updated to include references to 76 FR 43490.

OAC rule 3745-77-11

1. Paragraph (A) is being amended by the deletion of the obsolete citations to 75 FR 31514 and the addition of citations to "76 FR 43490, July 20, 2011" which incorporates the new deferral language published by USEPA in 76 FR 43490.
2. Paragraph (G)(2), various subparagraphs to this paragraph are being updated to include references to 76 FR 43490.