



State of Ohio Environmental Protection Agency

STREET ADDRESS:

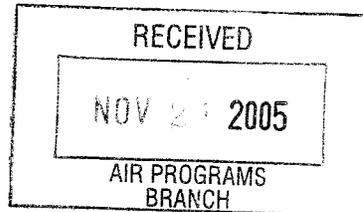
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NOV 15 2005



Mr. Thomas Skinner
Regional Administrator
U.S. EPA Region V
77 W. Jackson Blvd.
Chicago, IL 60604

**Re: Request for Approval of Ohio Administrative Code ("OAC") Chapter 3745-31
NSR Reform Rule Changes into the State Implementation Plan ("SIP")**

Dear Mr. Skinner:

In November, 2004, Ohio EPA provided you with a letter requesting approval of our proposed NSR Reform regulations into the SIP. Then in March, 2005, we received comment regarding our Clean Unit rules from the reviewer, Genevieve Damico, in your Region V office. In response I prepared a conditional approval request to address these concerns. In light of the June 24, 2005 D.C. Circuit Court of Appeals ("Court") decisions regarding the federal NSR Reform regulations, I am requesting full approval of only those portions of our final NSR Reform rules that are equivalent to those federal regulations which have not been vacated. Attached is a synopsis of the portions of Ohio EPA's rules for which I am withdrawing my request from consideration.

Ohio EPA intends to amend the remaining portions of our rule when a final decisions regarding the NSR Reform regulations is made in the appellate system. At that time, if necessary, I will submit the remaining portions of the NSR Reform rules for SIP approval. Until such time, Ohio EPA will not implement the federal Pollution Control Project (PCP) and Clean Unit provisions vacated by the court. We have drafted a Guidance Document to communicate this information to all stakeholders (attached).

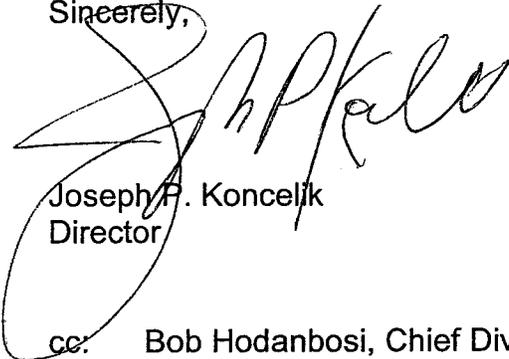
I believe we have already addressed the Court's decision remanding the record keeping and reporting requirements when there is not a "reasonable possibility" of a significant emissions increase. Ohio EPA incorporated a requirement that all facilities "where the sum of the federally enforceable potential to emit of the new or modified emissions units associated with the NSR project prior to the issuance of the NSR project's [minor NSR] permit to install is greater than any one of the significant levels found in the significant definition of rule 3745-31-01 of the Administrative Code" must record and submit the documents required under the original rule regardless of a reasonable possibility determination. Therefore, I intend to request full approval of Ohio EPA's rules regarding this issue.

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

On a final note, Ohio EPA inadvertently included, as part of a reference for 40 CFR 51.165; "Permit requirements," the federal register page number and promulgation date of the Equipment Replacement Provisions (ERP) (i.e., 68 FR 61276, Oct. 27, 2003). Ohio's rules do not contain language regarding the ERP itself, which was vacated by the court. This federal register notice and date was inadvertently added to the list of amendments that have occurred to 40 CFR 51.165 as part of a routine procedure for updating Ohio's references contained within rules as required by S.B. 265. We feel this reference is meaningless because there are no ERP provisions included in Ohio's rules. However, we wish to make it clear that we have no intention of implementing the ERP provisions until such time the Court decides otherwise and the provisions are incorporated into Ohio's rules. We will be removing the reference in the near future as identified in the attachment.

Based on the recent events and our current request, I am requesting you grant us SIP approval for the NSR Reform rules. Please contact Bob Hodanbosi if you have any questions about this submittal.

Sincerely,

A handwritten signature in black ink, appearing to read "JPK", is written over a circular stamp. The stamp contains the name "Joseph P. Koncelik" and the title "Director".

Joseph P. Koncelik
Director

cc: Bob Hodanbosi, Chief Division of Air Pollution Control
Genevieve Damico, U.S. EPA, Region V

JPK/jln

att

Synopsis of Request for SIP Approval: NSR Reform

A. The following portions of the NSR Reform Rules contained in Ohio Administrative Code Chapter 31 are being retained in Ohio's rules until any necessary future amendments are made. I am withdrawing my original request for approval of these sections of Chapter 31 into the SIP.

1. OAC 3745-31-01(Y). Definition for Clean Unit.
2. OAC 3745-31-01(III)(4)(c). Emission test for NSR projects that involve clean units
3. OAC 3745-31-01(III)(5)(h). Exclusion of a PCP from a physical change or change in the method of operation
4. OAC 3745-31-01(SSS)(3)(d). Exemption of increases or decreases in Clean Units from the determination of a net emissions increase.
5. OAC 3745-31-01(SSS)(3)(f)(iv). The requirements for credibility of decreases in emissions from Clean Units and PCPs when determining a net emissions increase.
6. OAC 3745-31-01(RRRR). Definition of PCP.
7. OAC 3745-31-22(A)(3)(e) and OAC 3745-31-22(A)(3)(f). The exclusion of Clean Unit or PCP emission reductions from use in determining emissions offsets.
8. 3745-31-30 Clean unit.
9. 3745-31-31 Pollution control project.

B. The following references to Clean Units (or OAC 3745-31-30) or PCPs (or OAC 3745-31-31) that are contained within the portions of the NSR Reform rules not vacated by the Court are meaningless considering Ohio EPA's intention to not implement either program. Because these portions of the rules remain vital to implementation of the remaining portions of the NSR Reform regulations, I am requesting approval of the language with the exception of the references, which are shown as stricken text below.. Again, in the future, Ohio EPA will be making any necessary amendments to the following passages and resubmitting those changes for SIP approval.

1. OAC 3745-31-01(III)(2): Comment regarding the determination of a significant net emissions increase

"[Comment: Except as otherwise provided in rules ~~3745-31-31~~ and

3745-31-32 of the Administrative Code, and consistent with the definition of major modification, a NSR project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases; a significant emissions increase and a significant net emissions increase. The NSR project is not a major modification if it does not cause a significant emissions increase. If the NSR project causes a significant emissions increase, then the NSR project is a major modification only if it also results in a significant net emissions increase.]"

2. OAC 3745-31-01(III)(4)(d). Hybrid test for NSR projects that involve multiple types of emissions units.

"A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (III)(4)(a) to (III)(4)(c) of this rule as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. ~~For example, if a NSR project involves both an existing emissions unit and a clean unit, the projected increase is determined by summing the values determined using the method specified in paragraph (III)(4)(a) of this rule for the existing unit and using the method specified in paragraph (III)(4)(c) of this rule for the clean unit.~~"

3. OAC 3745-31-10(B). Relaxation of Enforceable Limitations.

"At such time that a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the stationary source or modification otherwise to emit an air pollutant, such as a restriction on hours of operation, the requirements of rules 3745-31-10 to rule 3745-31-27 and ~~3745-31-30 to 3745-31-32~~ of the Administrative Code shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification."

4. OAC 3745-31-10(C). The reasonable possibility clause.

"The following provisions apply to NSR projects at existing emissions units at a major stationary source (other than NSR projects ~~at a clean unit or at a stationary source with a PAL~~) in circumstances where there is a reasonable possibility that a NSR project that is not part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraph (ZZZZ) of rule 3745-31-01

of the Administrative Code for calculating projected actual emissions."

- C. The following element will be stricken from Chapter 31 during the required 5-year review due to be completed by June 2006. We request the stricken text not be included in the SIP approval process.

1. OAC 3745-31-01 (ZZZZZ)(2)(h):

"40 CFR 51.165; "Permit requirements;" 51 FR 40669, Nov. 7, 1986, as amended at 52 FR 24713, July 1, 1987; 52 FR 29386, Aug 7, 1987; 54 FR 27285, 27299 June 28, 1989; 57 FR 3946, Feb. 3, 1992; 57 FR 32334, July 21, 1992; 67 FR 80244, Dec. 31, 2002; ~~68 FR 61276, Oct. 27, 2003~~; 68 FR 63027, Nov. 7, 2003."

This passage provides a reference for 40 CFR 51.165 where used in the Chapter 31 rules. Ohio EPA inadvertently left the federal register notice, "68 FR 61276, Oct. 27, 2003," for the previously vacated ERP rule. The regulations promulgated under that federal register notice that were later vacated are not contained within the text of Chapter 31 and therefore, the reference should be amended.

Ohio EPA

Division of Air Pollution Control

inter-office communication

to: *All Air Permitting and Enforcement Staff*

from: *Bob Hodanbosi, Chief DAPC*

cc: *Mike Hopkins*

subject: *Implementation of NSR Reform Pollution Control Project and Clean Unit Provisions*

date: *October 26, 2005*

After an extensive public participation process, Ohio EPA incorporated the 2002 federal NSR Reform Regulations into Chapter 31 of the Ohio Administrative Code ("OAC") in October of 2004. On June 24, 2005, the D.C. Circuit Court of Appeals ("Court") made a decision regarding challenges to the 2002 federal NSR Reform regulations. The results include the vacation of the Clean Unit applicability test and the Pollution Control Project (PCP) exemption. The court also remanded the recordkeeping provisions to the U.S. EPA to either provide an acceptable explanation for its "reasonable possibility" standard or to devise an appropriate alternative standard. The purpose of this IOC is to provide guidance on how Ohio EPA Division of Air Pollution Control ("DAPC") will address the PCP and Clean Unit provisions contained in the OAC.

Ohio EPA has no intention of implementing the PCP and Clean Unit provisions vacated by the court until such time that the Court, or U.S. EPA, incorporates changes or renders a new decision regarding their vacation. At this time, Ohio EPA has decided not to amend the OAC to remove these provisions. However, we have requested U.S. EPA approve only those portions of Ohio's NSR Reform rules into the State Implementation Plan (SIP) that have not been vacated by the court. Ohio EPA intends to amend the relevant portions of our rule, or request full SIP approval when a final decision regarding the NSR Reform regulations is made in the appellate system.

Ohio EPA believes we have already addressed the Courts decision remanding the record keeping and reporting requirements when there is not a "reasonable possibility" of a significant emissions increase. Ohio EPA incorporated a requirement that all facilities "where the sum of the federally enforceable potential to emit of the new or modified emissions units associated with the NSR project prior to the issuance of the NSR project's [minor NSR] permit-to-install is greater than any one of the significant levels found in the significant definition of rule 3745-31-01 of the Administrative Code" must record and submit

the documents required under the original rule regardless of a reasonable possibility determination. Therefore, we intend to request full SIP approval of Ohio EPA's rules regarding this issue.

Please note that the Court's ruling affects the applicability of major NSR for PCPs but does not affect our state-based Pollution Control or Pollution Prevention Exemption under OAC 3745-31-01(PPP)(1)(a)(vi). If a major modification is not applicable, a source may be exempted from a modification under the state-based program if the change is considered a Pollution Control or Pollution Prevention Project.

In closing, any correspondence or applications received from the regulated community requesting a PCP exclusion or a Clean Unit designation will not be processed by Ohio EPA until such time that the Court's render an alternate decision.

I have attached below a copy of the synopsis of those provisions of Ohio's NSR Reform rules for which we are not requesting SIP approval. If you have any questions, please feel free to contact the Central Office Permitting Section.

Thank you,

Bob Hodanbosi
Chief, Ohio EPA DAPC

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paragraph (ZZZZ) of rule 3745-31-01 of the Administrative Code for calculating projected actual emissions."

C. The following element will be stricken from Chapter 31 during the required 5-year review due to be completed by June 2006. We request the stricken text not be included in the SIP approval process.

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