



Ohio Revised Code

Section 3704.036 Title V permit program.

Effective: December 2, 1996

Legislation: House Bill 670 - 121st General Assembly

(A) The director of environmental protection shall develop and administer a federally approvable Title V permit program and shall take all necessary and appropriate action to implement, through the issuance of Title V permits, applicable requirements of the federal Clean Air Act. Title V permits shall be required only for major sources and affected sources, as defined in 40 C.F.R. 70.2, and solid waste incineration units required to obtain a permit under section 129 (e) of the federal Clean Air Act unless the administrator extends the obligation to obtain a Title V permit to other sources.

The Title V permit program does not apply to research and development sources whose emissions do not exceed the requirements of 40 C.F.R. 70.3 (a)(1) or any facility or air contaminant source authorized by 40 C.F.R. 70.3 (b) to be exempt from the obligation to obtain a Title V permit. A source that obtains a Title V permit shall not be required to obtain any other operating permit under this chapter and rules adopted under it.

Federally enforceable requirements shall be identified separately in Title V permits. The director may include in those permits reasonable and lawful terms and conditions necessary to ensure compliance with this chapter and rules adopted under it that are not federally enforceable requirements, provided that those terms and conditions are clearly separated from federally enforceable requirements and the Title V permits state that those terms and conditions are not federally enforceable.

(B) The director shall adopt, and may amend, suspend, and rescind, rules to facilitate the implementation, supervision, administration, and operation of the Title V permit program that are consistent with, and no more stringent than, the requirements of Title V of the federal Clean Air Act and 40 C.F.R. part 70. The rules shall establish at least all of the following:

(1) Definitions of the following terms, which shall be consistent with and no more stringent than the definitions in 40 C.F.R. part 70: "administrative permit amendment," "affected source," "applicable requirement," "emergency," "emissions unit," "fugitive emissions," "major source," "major stationary



source," "potential to emit," "regulated air pollutant," and "stationary source;"

(2) Provisions for minor modifications and operational flexibility that minimize administrative burdens on a source and ensure maximum operational flexibility consistent with the federal Clean Air Act and regulations adopted under it;

(3) Provisions for administrative Title V permit amendments. The rules shall require the director to approve or disapprove an administrative permit amendment in accordance with all of the following:

(a) The director shall take not more than sixty days from receipt of a request for an administrative permit amendment to issue a final action on the request in accordance with the procedures specified in 40 C.F.R. 70.7 (d).

(b) Chapter 119. and sections 3704.04 and 3745.07 of the Revised Code do not apply to administrative permit amendments under division (B)(3) of this section.

(c) The director's determination under division (B)(3) of this section is a final action appealable to the environmental review appeals commission under section 3745.04 of the Revised Code.

(4) Provisions for exemption of insignificant air contaminant sources from inclusion in the Title V permit program. To the extent consistent with the federal Clean Air Act, the exemptions shall include, at a minimum, all source categories that are excluded from the requirements to obtain installation permits and operating permits pursuant to divisions (F) and (G) of section 3704.03 of the Revised Code and any source categories specifically exempted under 40 C.F.R. part 70 and also shall include, to the extent consistent with the federal Clean Air Act, any air contaminant sources with the potential to emit not more than five tons per year of a federally regulated air pollutant other than hazardous air pollutants and not more than twenty per cent of an applicable major source threshold under the federal Clean Air Act.

(5) Provisions to implement the permit shield permitted by the Federal Clean Air Act to the extent consistent with that act and regulations adopted under it, including at least provisions by which a Title V permit applicant may request the director to make a determination whether a provision or class of requirements of that act is applicable to the applicant's air contaminant source. Any such



determination made by the director shall be specified in the applicant's Title V permit.

The director may adopt, amend, suspend, and rescind such other rules as are necessary for a federally approvable Title V permit program, which shall be consistent with, and no more stringent than, the requirements of Title V of the federal Clean Air Act and 40 C.F.R. part 70.

(C) Applications for initial Title V permits shall be submitted not less than one year after the director adopts rules under division (B) of this section for the implementation of the Title V permit program. New facilities that are required to obtain a Title V permit shall submit a complete Title V permit application not later than one year after the date of commencement of operation.

Title V permits shall not become effective prior to approval of the Title V permit program by the administrator pursuant to section 502 of the federal Clean Air Act.

Title V permits, except for permits that contain acid rain provisions pursuant to Title IV of the federal Clean Air Act and permits issued for solid waste incineration units combusting municipal waste that are subject to section 129 (e) of the federal Clean Air Act, may be issued for a period determined by the director not to exceed five years, are renewable, and are transferable. Title V permits that contain acid rain provisions pursuant to Title IV of the federal Clean Air Act shall be issued for a fixed term of five years. Title V permits for solid waste incineration units combusting municipal waste that are subject to section 129 (e) of the federal Clean Air Act may be issued for a period to be determined by the director not to exceed twelve years and are renewable. If such permits are issued for a period longer than five years, they shall be reviewed by the director at least once every five years to determine compliance with the permit requirements and to incorporate any new requirements established during the previous five years.

(D) A complete Title V permit application is one that contains all the information, consistent with 40 C.F.R. 70.5 (c), needed to begin processing the application and a certification by a responsible official of the truth, accuracy, and completeness of the information in the application, based upon information and belief formed after reasonable inquiry by the responsible official. Unless the director determines within sixty days after receipt of the application that the application is not complete, the application shall be deemed to be complete.



If, during the processing of an application before or after it has been determined or deemed to be complete, the director determines that additional information is necessary in order to evaluate or take final action on the application, the director may request that information in writing from the applicant. Any such request by the director shall identify the information requested with reasonable specificity and shall provide a reasonable time, not less than fifteen days, for the applicant's submission of the requested information.

If an applicant fails to make a good faith and timely response to a request for additional information under this division with regard to an application that the director believes to be incomplete, the director shall offer to meet with the applicant within seven days after issuance of a letter for failure to submit the requested information. If the meeting or meeting offer fails to obtain a complete application from the applicant, the director, without prior hearing, shall make a final determination that the application is not complete. Any such determination shall not become effective until twenty days after notice of the determination is sent to the applicant by certified mail. An incompleteness determination by the director may be appealed in accordance with section 3745.04 of the Revised Code, except that if the notice of appeal is timely filed and is accompanied by an application for stay, the stay shall become effective upon filing and shall continue until such time as the environmental review appeals commission rules on the merits of the stay. The commission shall conduct an immediate hearing and determination on the application for stay without interruption by continuances, other than for unavoidable circumstances. If the commission grants the stay, it immediately shall conduct the hearing on the merits and determine the appeal without interruption by continuances, other than for unavoidable circumstances.

(E) The director expressly shall include permit shield provisions for each Title V permit in accordance with the following requirements:

(1) Except as provided in this section, the director shall expressly include in a Title V permit a provision stating that compliance with the conditions of the permit shall be deemed to be compliance with any applicable requirements as of the date of permit issuance, provided that either:

(a) The applicable requirements are included and are specifically identified in the permit;

(b) The director, in acting on the permit application or revision, determines in writing that other



requirements specifically identified are not applicable to the facility, and the permit includes the determination or a concise summary of it.

(2) Nothing in division (E) of this section or in any Title V permit shall alter or affect any of the following:

(a) The provisions of section 303 of the federal Clean Air Act, including the authority of the administrator under that section;

(b) The liability of an owner or operator of a facility for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the acid rain program, consistent with section 408 (a) of the federal Clean Air Act;

(d) The ability of the administrator to obtain information from a facility pursuant to section 114 of the federal Clean Air Act.

(F)(1) Title V permit applications shall be acted upon by the director in accordance with Chapters 119. and 3745. of the Revised Code and with 40 C.F.R. 70.8. If a Title V permit expires after a complete and timely renewal application has been filed with the director, all provisions and authorizations of the expired permit shall remain in effect until the director's final action on the pending renewal application. The director's failure to take action on a Title V permit application or permit renewal or modification application within the deadlines specified in the federal Clean Air Act or in 40 C.F.R. part 70 shall be a final action appealable to the environmental review appeals commission under section 3745.04 of the Revised Code.

(2) The director shall not issue a Title V permit if the administrator timely objects to its issuance under 40 C.F.R. 70.8 (c) or (d).

(3) The director may modify, revoke, or revoke and reissue a Title V permit for cause. The director shall modify, revoke, or revoke and reissue a Title V permit if requested to do so by the administrator under 40 C.F.R. 70.8 (d).



(G) A Title V permit applicant may request a single permit for a stationary source with multiple Title V emissions units or may request separate permits for any one or more emissions units at the same stationary source required to have a Title V permit. The director shall honor all such requests.

Upon written request of a Title V permit applicant, the director shall make a determination of the applicability or inapplicability of any provision or class of requirements under the federal Clean Air Act to an emissions unit or stationary source and shall include that determination or a concise summary of it in the applicant's Title V permit.

(H) A Title V permit applicant may request a permit that accommodates multiple operating scenarios and anticipated changes in emissions during the term of a permit at a specified facility. The director shall include in a Title V permit all operating scenarios and anticipated changes in emissions for which an application has been made unless the operating scenarios or emissions are prohibited by federally enforceable requirements. The director may include in a Title V permit such monitoring and recordkeeping requirements as may be reasonably necessary to verify that any authorized operating scenario complies with federally enforceable requirements. In imposing any such requirements, the director shall consider and minimize, to the extent practicable, the administrative burdens that the monitoring will impose on the source.

(I) The director, by rule or order on a class of similar permit applications, may issue a general permit covering numerous similar facilities or air contaminant sources. Any such general permit shall comply with all substantive requirements applicable to conventional Title V permits. A general permit shall apply to the owner or operator of a facility or air contaminant source only upon application of the owner or operator to the director.

(J) The director may issue a single Title V permit authorizing emissions from similar operations at multiple temporary locations within the state, provided that the permit ensures compliance with all federally enforceable requirements and with 40 C.F.R. 70.6 (e) at all authorized locations. Any such permit shall require the owner or operator to notify the director in advance of each change in location.

(K) A Title V permit shall address all existing federally enforceable requirements applicable to the



permitted facility and shall not impose new substantive requirements beyond the federally enforceable requirements except for terms and conditions that are identified as not federally enforceable as provided in division (A) of this section. A Title V permit shall specify the regulatory citation for federal requirements addressed in the permit and shall identify any difference in form as compared to the federally enforceable requirement on which it is based.

If the applicant for a Title V permit proposes an alternative emission limit as provided under division (E) of section 3704.03 of the Revised Code, and if the director determines that the alternative emission limit is equivalent to an emission limit adopted under that division, the alternative emission limit shall be included in the Title V permit together with provisions to ensure that any resulting emission limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures. Any such alternative emission limit shall not take effect if the administrator timely objects to it in accordance with division (F)(2) of this section.

(L) The director shall take all necessary and appropriate action to do both of the following:

(1) Issue Title V permits for affected sources consistent with the requirements of Title IV of the federal Clean Air Act;

(2) Implement, through Title V permits, applicable requirements of section 112 of the federal Clean Air Act.

(M) The director shall develop procedures for the Title V permit program such that the program shall minimize procedural burdens and maximize source operational flexibility to the extent consistent with the federal Clean Air Act.

(N) A Title V permit shall not apply to a physical, operational, or other change that is not a change within a permitted facility. A Title V permittee shall provide simultaneous written notice to the director and the administrator of each such off-permit change that is not addressed or prohibited by the federally enforceable portion of the Title V permit, except that no notice is required for off-permit changes that qualify as insignificant under rules adopted under division (B)(4) of this section.

(O) The director shall adopt rules doing both of the following:



(1) Establishing procedures under which any air contaminant source may assume federally enforceable restrictions on its emissions rates, operating rates, hours of operation, or other parameters that are more stringent than those limitations that ordinarily would apply to the source in order to limit the potential of the source to emit;

(2) To the maximum extent possible consistent with federal law, allowing such a source to impose the limitations described in division (O)(1) of this section on its operations unilaterally without further action by the director or approval from the United States environmental protection agency and otherwise minimizing the time required to effectuate such federally enforceable limits.

Until the director adopts rules under division (O) of this section, the owner or operator of an air contaminant source or sources may submit an application for a permit or permit modification pursuant to division (G) of section 3704.03 of the Revised Code with federally enforceable terms and conditions to limit the potential to emit of the source or sources to less than the major source emission thresholds defined in 40 C.F.R. 70.2. The application shall identify both an annual limit and a short-term limit of not more than thirty days for each pollutant to be restricted together with adequate methods for establishing compliance with the limits. Upon submission of the application, the limits shall be federally enforceable against the applicant. The application shall be signed by a responsible official and submitted simultaneously to the director and the administrator. The director shall act on the application in accordance with Chapters 119. and 3745. of the Revised Code.