

# AN ACT

To amend section 3704.03 of the Revised Code to make changes in the Air Pollution Control Law regarding the costs of compliance with rules, permits to install, air quality monitoring, and best available technology.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 3704.03 of the Revised Code be amended to read as follows:

Sec. 3704.03. The director of environmental protection may do any of the following:

(A) Develop programs for the prevention, control, and abatement of air pollution;

(B) Advise, consult, contract, and cooperate with any governmental or private agency in the furtherance of the purposes of this chapter;

(C) Encourage, participate in, or conduct studies, investigations, and research relating to air pollution, collect and disseminate information, and conduct education and training programs relating to the causes, prevention, control, and abatement of air pollution;

(D) Adopt, modify, and rescind rules prescribing ambient air quality standards for the state as a whole or for various areas of the state that are consistent with and no more stringent than the national ambient air quality standards in effect under the federal Clean Air Act;

(E) Adopt, modify, suspend, and rescind rules for the prevention, control, and abatement of air pollution, including rules prescribing for the state as a whole or for various areas of the state emission standards for air contaminants, and other necessary rules for the purpose of achieving and maintaining compliance with ambient air quality standards in all areas within the state as expeditiously as practicable, but not later than any deadlines applicable under the federal Clean Air Act; rules for the prevention or control of the emission of hazardous or toxic air contaminants; rules prescribing fugitive dust limitations and standards that are related, on an areawide basis, to attainment and maintenance of ambient air quality standards; rules prescribing shade, density, or opacity limitations and

standards for emissions, provided that with regard to air contaminant sources for which there are particulate matter emission standards in addition to a shade, density, or opacity rule, upon demonstration by such a source of compliance with those other standards, the shade, density, or opacity rule shall provide for establishment of a shade, density, or opacity limitation for that source that does not require the source to reduce emissions below the level specified by those other standards; rules for the prevention or control of odors and air pollution nuisances; rules that prevent significant deterioration of air quality to the extent required by the federal Clean Air Act; rules for the protection of visibility as required by the federal Clean Air Act; and rules prescribing open burning limitations and standards. In adopting, modifying, suspending, or rescinding any such rules, the director, to the extent consistent with the federal Clean Air Act, shall hear and give consideration to evidence relating to all of the following:

(1) Conditions calculated to result from compliance with the rules, the overall cost within this state of compliance with the rules, and their relation to benefits to the people of the state to be derived from that compliance;

(2) The quantity and characteristics of air contaminants, the frequency and duration of their presence in the ambient air, and the dispersion and dilution of those contaminants;

(3) Topography, prevailing wind directions and velocities, physical conditions, and other factors that may or may combine to affect air pollution.

Consistent with division (K) of section 3704.036 of the Revised Code, the director shall consider alternative emission limits proposed by the owner or operator of an air contaminant source that is subject to an emission limit established in rules adopted under this division and shall accept those alternative emission limits that the director determines to be equivalent to emission limits established in rules adopted under this division.

(F)(1) Adopt, modify, suspend, and rescind rules consistent with the purposes of this chapter prohibiting the location, installation, construction, or modification of any air contaminant source or any machine, equipment, device, apparatus, or physical facility intended primarily to prevent or control the emission of air contaminants unless an installation permit therefor has been obtained from the director or ~~his~~ the director's authorized representative. ~~Applications~~

(2) Applications for installation permits shall be accompanied by plans, specifications, construction schedules, and such other pertinent information and data, including data on ambient air quality impact and a demonstration of best available technology, as the director may require. Installation permits

shall be issued for a period specified by the director and are transferable. The director shall specify in each permit the applicable emission standards and that the permit is conditioned upon payment of the applicable fees as required by section 3745.11 of the Revised Code and upon the right of ~~his~~ the director's authorized representatives to enter upon the premises of the person to whom the permit has been issued, at any reasonable time and subject to safety requirements of the person in control of the premises, for the purpose of determining compliance with such standards, this chapter, the rules adopted thereunder, and the conditions of any permit, variance, or order issued thereunder. Each proposed new or modified air contaminant source shall provide such notice of its proposed installation or modification to other states as is required under the federal Clean Air Act. Installation permits shall include the authorization to operate sources installed and operated in accordance with terms and conditions of the installation permits for a period not to exceed one year from commencement of operation, which authorization shall constitute an operating permit under division (G) of this section and rules adopted under it.

No installation permit shall be required for activities that are subject to and in compliance with a plant-wide applicability limit issued by the director in accordance with rules adopted under this section.

No installation permit shall be issued except in accordance with all requirements of this chapter and rules adopted thereunder. No application shall be denied or permit revoked or modified without a written order stating the findings upon which denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or permit holder by certified mail.

(3) Not later than two years after the effective date of this amendment, the director shall adopt a rule in accordance with Chapter 119. of the Revised Code specifying that a permit to install is required only for new or modified air contaminant sources that emit any of the following air contaminants:

(a) An air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the federal Clean Air Act;

(b) An air contaminant for which the air contaminant source is regulated under the federal Clean Air Act;

(c) An air contaminant that presents, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects, including, but not limited to, substances that are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, or neurotoxic, that cause reproductive dysfunction, or that are acutely or

chronically toxic, or a threat of adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, and that is identified in the rule by chemical name and chemical abstract service number.

The director may modify the rule adopted under division (F)(3)(c) of this section for the purpose of adding or deleting air contaminants. For each air contaminant that is contained in or deleted from the rule adopted under division (F)(3)(c) of this section, the director shall include in a notice accompanying any proposed or final rule an explanation of the director's determination that the air contaminant meets the criteria established in that division and should be added to, or no longer meets the criteria and should be deleted from, the list of air contaminants. The explanation shall include an identification of the scientific evidence on which the director relied in making the determination. Until adoption of the rule under division (F)(3)(c) of this section, nothing shall affect the director's authority to issue, deny, modify, or revoke permits to install under this chapter and rules adopted under it.

(4)(a) Applications for permits to install new or modified air contaminant sources shall contain sufficient information regarding air contaminants for which the director may require a permit to install to determine conformity with the environmental protection agency's document entitled "Review of New Sources of Air Toxics Emissions, Option A," dated May 1986, which the director shall use to evaluate toxic emissions from new or modified air contaminant sources. The director shall make copies of the document available to the public upon request at no cost and post the document on the environmental protection agency's web site. Any inconsistency between the document and division (F)(4) of this section shall be resolved in favor of division (F)(4) of this section.

(b) The maximum acceptable ground level concentration of an air contaminant shall be calculated in accordance with the document entitled "Review of New Sources of Air Toxics Emissions, Option A." Modeling shall be conducted to determine the increase in the ground level concentration of an air contaminant beyond the facility's boundary caused by the emissions from a new or modified source that is the subject of an application for a permit to install. Modeling shall be based on the maximum hourly rate of emissions from the source using information including, but not limited to, any emission control devices or methods, operational restrictions, stack parameters, and emission dispersion devices or methods that may affect ground level concentrations, either individually or in combination. The director shall determine whether the activities for which a

permit to install is sought will cause an increase in the ground level concentration of one or more relevant air contaminants beyond the facility's boundary by an amount in excess of the maximum acceptable ground level concentration. In making the determination as to whether the maximum acceptable ground level concentration will be exceeded, the director shall give consideration to the modeling conducted under division (F)(4)(b) of this section and other relevant information submitted by the applicant.

(c) If the modeling conducted under division (F)(4)(b) of this section with respect to an application for a permit to install demonstrates that the maximum ground level concentration from a new or modified source will be greater than or equal to eighty per cent, but less than one hundred per cent of the maximum acceptable ground level concentration for an air contaminant, the director may establish terms and conditions in the permit to install for the air contaminant source that will require the owner or operator of the air contaminant source to maintain emissions of that air contaminant commensurate with the modeled level, which shall be expressed as allowable emissions per day. In order to calculate the allowable emissions per day, the director shall multiply the hourly emission rate modeled under division (F)(4)(b) of this section to determine the ground level concentration by the operating schedule that has been identified in the permit to install application. Terms and conditions imposed under division (F)(4)(c) of this section are not federally enforceable requirements and, if included in a Title V permit, shall be placed in the portion of the permit that is only enforceable by the state.

(d) If the modeling conducted under division (F)(4)(b) of this section with respect to an application for a permit to install demonstrates that the maximum ground level concentration from a new or modified source will be less than eighty per cent of the maximum acceptable ground level concentration, the owner or operator of the source annually shall report to the director, on a form prescribed by the director, whether operations of the source are consistent with the information regarding the operations that was used to conduct the modeling with regard to the permit to install application. The annual report to the director shall be in lieu of an emission limit or other permit terms and conditions imposed pursuant to division (F)(4) of this section. The director may consider any significant departure from the operations of the source described in the permit to install application that results in greater emissions than the emissions rate modeled to determine the ground level concentration as a modification and require the owner or operator to submit a permit to install application for the increased emissions. The requirements established in division (F)(4)(d) of this section are not

federally enforceable requirements and, if included in a Title V permit, shall be placed in the portion of the permit that is only enforceable by the state.

(e) Division (F)(4) of this section and the document entitled "Review of New Sources of Air Toxics Emissions, Option A" shall not be included in the state implementation plan under section 110 of the federal Clean Air Act and do not apply to an air contaminant source that is subject to a maximum achievable control technology standard or residual risk standard under section 112 of the federal Clean Air Act, to a particular air contaminant identified under 40 C.F.R. 51.166, division (b)(23), for which the director has determined that the owner or operator of the source is required to install best available control technology for that particular air contaminant, or to a particular air contaminant for which the director has determined that the source is required to meet the lowest achievable emission rate, as defined in 40 C.F.R. part 51, Appendix S, for that particular air contaminant.

(f)(i) Division (F)(4) of this section and the document entitled "Review of New Sources of Air Toxics Emissions, Option A" do not apply to parking lots, storage piles, storage tanks, transfer operations, grain silos, grain dryers, emergency generators, gasoline dispensing operations, air contaminant sources that emit air contaminants solely from the combustion of fossil fuels, or the emission of wood dust, sand, glass dust, coal dust, silica, and grain dust.

(ii) Notwithstanding division (F)(4)(f)(i) of this section, the director may require an individual air contaminant source that is within one of the source categories identified in division (F)(4)(f)(i) of this section to submit information in an application for a permit to install a new or modified source in order to determine the source's conformity to the document if the director has information to conclude that the particular new or modified source will potentially cause an increase in ground level concentration beyond the facility's boundary that exceeds the maximum acceptable ground level concentration as set forth in the document.

(iii) The director may adopt rules in accordance with Chapter 119. of the Revised Code that are consistent with the purposes of this chapter and that add to or delete from the source category exemptions established in division (F)(4)(f)(i) of this section.

(5) Not later than one year after the effective date of this amendment, the director shall adopt rules in accordance with Chapter 119. of the Revised Code specifying activities that do not, by themselves, constitute beginning actual construction activities related to the installation or modification of an air contaminant source for which a permit to install is required such as the grading and clearing of land, on-site storage of portable parts and

equipment, and the construction of foundations or buildings that do not themselves emit air contaminants. The rules also shall allow specified initial activities that are part of the installation or modification of an air contaminant source, such as the installation of electrical and other utilities for the source, prior to issuance of a permit to install, provided that the owner or operator of the source has filed a complete application for a permit to install, the director or the director's designee has determined that the application is complete, and the owner or operator of the source has notified the director that this activity will be undertaken prior to the issuance of a permit to install. Any activity that is undertaken by the source under those rules shall be at the risk of the owner or operator. The rules shall not apply to activities that are precluded prior to permit issuance under section 111, section 112, Part C of Title I, and Part D of Title I of the federal Clean Air Act.

(G) Adopt, modify, suspend, and rescind rules prohibiting the operation or other use of any new, modified, or existing air contaminant source unless an operating permit has been obtained from the director or ~~his~~ the director's authorized representative, or the air contaminant source is being operated in compliance with the conditions of a variance issued pursuant to division (H) of this section. Applications for operating permits shall be accompanied by such plans, specifications, and other pertinent information as the director may require. Operating permits may be issued for a period determined by the director not to exceed five years, are renewable, and are transferable. The director shall specify in each operating permit that the permit is conditioned upon payment of the applicable fees as required by section 3745.11 of the Revised Code and upon the right of ~~his~~ the director's authorized representatives to enter upon the premises of the person to whom the permit has been issued, at any reasonable time and subject to safety requirements of the person in control of the premises, for the purpose of determining compliance with this chapter, the rules adopted thereunder, and the conditions of any permit, variance, or order issued thereunder. Operating permits may be denied or revoked for failure to comply with this chapter or the rules adopted thereunder. An operating permit shall be issued only upon a showing satisfactory to the director or ~~his~~ the director's representative that the air contaminant source is being operated in compliance with applicable emission standards and other rules or upon submission of a schedule of compliance satisfactory to the director for a source that is not in compliance with all applicable requirements at the time of permit issuance, provided that the compliance schedule shall be consistent with and at least as stringent as that contained in any judicial consent decree or administrative order to

which the air contaminant source is subject. The rules shall provide for the issuance of conditional operating permits for such reasonable periods as the director may determine to allow the holder of an installation permit, who has constructed, installed, located, or modified a new air contaminant source in accordance with the provisions of an installation permit, to make adjustments or modifications necessary to enable the new air contaminant source to comply with applicable emission standards and other rules. Terms and conditions of operating permits issued pursuant to this division shall be federally enforceable for the purpose of establishing the potential to emit of a stationary source and shall be expressly designated as federally enforceable. Any such federally enforceable restrictions on a source's potential to emit shall include 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 restrictions. In other respects, operating permits issued pursuant to this division are enforceable as state law only. No application shall be denied or permit revoked or modified without a written order stating the findings upon which denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or permit holder by certified mail.

(H) Adopt, modify, and rescind rules governing the issuance, revocation, modification, or denial of variances that authorize emissions in excess of the applicable emission standards.

No variance shall be issued except pursuant to those rules. The rules shall prescribe conditions and criteria in furtherance of the purposes of this chapter and consistent with the federal Clean Air Act governing eligibility for issuance of variances, which shall include all of the following:

(1) Provisions requiring consistency of emissions authorized by a variance with timely attainment and maintenance of ambient air quality standards;

(2) Provisions prescribing the classes and categories of air contaminants and air contaminant sources for which variances may be issued;

(3) Provisions defining the circumstances under which an applicant shall demonstrate that compliance with applicable emission standards is technically infeasible, economically unreasonable, or impossible because of conditions beyond the control of the applicant;

(4) Other provisions prescribed in furtherance of the goals of this chapter.

The rules shall prohibit the issuance of variances from any emission limitation that was applicable to a source pursuant to an installation permit and shall prohibit issuance of variances that conflict with the federal Clean

Air Act.

Applications for variances shall be accompanied by such information as the director may require. In issuing variances, the director may order the person to whom a variance is issued to furnish plans and specifications and such other information and data, including interim reports, as the director may require and to proceed to take such action within such time as the director may determine to be appropriate and reasonable to prevent, control, or abate ~~his~~ the person's existing emissions of air contaminants. The director shall specify in each variance that the variance is conditioned upon payment of the applicable fees as required by section 3745.11 of the Revised Code and upon the right of ~~his~~ the director's authorized representatives to enter upon the premises of the person to whom the variance has been issued, at any reasonable time and subject to safety requirements of the person in control of the premises, for the purpose of determining compliance with this chapter, the rules adopted thereunder, and the conditions of any permit, variance, or order issued thereunder.

The director may hold a public hearing on an application for a variance or renewal thereof at a location in the county where the variance is sought. The director shall give not less than twenty days' notice of the hearing to the applicant by certified mail and cause at least one publication of notice in a newspaper with general circulation in the county where the variance is sought. The director shall keep available for public inspection at the principal office of the environmental protection agency a current schedule of pending applications for variances and a current schedule of pending variance hearings. The director shall make a complete stenographic record of testimony and other evidence submitted at the hearing. The director shall make a written determination to issue, renew, or deny the variance and shall enter ~~his~~ the determination and the basis therefor into the record of the hearing. The director shall issue, renew, or deny an application for a variance or renewal thereof, or issue a proposed action upon the application pursuant to section 3745.07 of the Revised Code, within six months of the date upon which the director receives a complete application with all pertinent information and data required by the director.

Any variance granted pursuant to rules adopted under this division shall be for a period specified by the director, not to exceed three years, and may be renewed from time to time on such terms and for such periods, not to exceed three years each, as the director determines to be appropriate. A variance may be revoked, or renewal denied, for failure to comply with conditions specified in the variance. No variance shall be issued, denied, revoked, or modified without a written order stating the findings upon which

the issuance, denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or variance holder by certified mail.

(I) Require the ~~person responsible for any~~ owner or operator of an air contaminant source to install, employ, maintain, and operate such emissions, ambient air quality, meteorological, or other monitoring devices or methods as the director shall prescribe; to sample those emissions at such locations, at such intervals, and in such manner as the director prescribes; to maintain records and file periodic reports with the director containing information as to location, size, and height of emission outlets, rate, duration, and composition of emissions, and any other pertinent information the director prescribes; and to provide such written notice to other states as the director shall prescribe. In requiring monitoring devices, records, and reports, the director, to the extent consistent with the federal Clean Air Act, shall give consideration to technical feasibility and economic reasonableness and allow reasonable time for compliance. For sources where a specific monitoring, record-keeping, or reporting requirement is specified for a particular air contaminant from a particular air contaminant source in an applicable regulation adopted by the United States environmental protection agency under the federal Clean Air Act or in an applicable rule adopted by the director, the director shall not impose an additional requirement in a permit that is a different monitoring, record-keeping, or reporting requirement other than the requirement specified in the applicable regulation or rule for that air contaminant except as otherwise agreed to by the owner or operator of the air contaminant source and the director. If two or more regulations or rules impose different monitoring, record-keeping, or reporting requirements for the same air contaminant from the same air contaminant source, the director may impose permit terms and conditions that consolidate or streamline the monitoring, record-keeping, or reporting requirements in a manner that conforms with each applicable requirement. To the extent consistent with the federal Clean Air Act and except as otherwise agreed to by the owner or operator of an air contaminant source and the director, the director shall not require an operating restriction that has the practical effect of increasing the stringency of an existing applicable emission limitation or standard.

(J) Establish, operate, and maintain monitoring stations and other devices designed to measure air pollution and ~~to~~ enter into contracts with any public or private agency for the establishment, operation, or maintenance of such stations and devices;

(K) By rule adopt procedures for giving reasonable public notice and conducting public hearings on any plans for the prevention, control, and

abatement of air pollution that the director is required to submit to the federal government;

(L) Through any employee, agent, or authorized representative of the director or the environmental protection agency, enter upon private or public property, including improvements thereon, at any reasonable time, to make inspections, take samples, conduct tests, and examine records or reports pertaining to any emission of air contaminants and any monitoring equipment or methods and to determine if there are any actual or potential emissions from such premises and, if so, to determine the sources, amounts, contents, and extent of those emissions, or to ascertain whether there is compliance with this chapter, any orders issued or rules adopted thereunder, or any other determination of the director. The director, at reasonable times, may have access to and copy any such records. If entry or inspection authorized by this division is refused, hindered, or thwarted, the director or ~~his~~ the director's authorized representative may by affidavit apply for, and any judge of a court of record may issue, an appropriate inspection warrant necessary to achieve the purposes of this chapter within the court's territorial jurisdiction.

(M) Accept and administer gifts or grants from the federal government and from any other source, public or private, for carrying out any of the functions under this chapter;

(N) Obtain necessary scientific, technical, and laboratory services;

(O) Establish advisory boards in accordance with section 121.13 of the Revised Code;

(P) Delegate to any city or general health district or political subdivision of the state any of ~~his~~ the director's enforcement and monitoring powers and duties, other than rule-making powers, as the director elects to delegate, and in addition employ, compensate, and prescribe the powers and duties of such officers, employees, and consultants as are necessary to enable the director to exercise ~~his~~ the authority and perform duties imposed upon ~~him~~ the director by law. Technical and other services shall be performed, insofar as practical, by personnel of the environmental protection agency.

(Q) Certify to the government of the United States or any agency thereof that an industrial air pollution facility is in conformity with the state program or requirements for control of air pollution whenever such certificate is required for a taxpayer pursuant to any federal law or requirements;

(R) Issue, modify, or revoke orders requiring abatement of or prohibiting emissions ~~which~~ that violate applicable emission standards or other requirements of this chapter and rules adopted thereunder, or requiring

emission control devices or measures in order to comply with applicable emission standards or other requirements of this chapter and rules adopted thereunder. Any such order shall require compliance with applicable emission standards by a specified date and shall not conflict with any requirement of the federal Clean Air Act. In the making of such orders, the director, to the extent consistent with the federal Clean Air Act, shall give consideration to, and base ~~his~~ the determination on, evidence relating to the technical feasibility and economic reasonableness of compliance with such orders and their relation to benefits to the people of the state to be derived from such compliance. If, under the federal Clean Air Act, any such order shall provide for the posting of a bond or surety to secure compliance with the order as a condition of issuance of the order, the order shall so provide, but only to the extent required by the federal Clean Air Act.

(S) To the extent provided by the federal Clean Air Act, adopt, modify, and rescind rules providing for the administrative assessment and collection of monetary penalties, not in excess of those required pursuant to the federal Clean Air Act, for failure to comply with any emission limitation or standard, compliance schedule, or other requirement of any rule, order, permit, or variance issued or adopted under this chapter or required under the applicable implementation plan whether or not the source is subject to a federal or state consent decree. The director may require the submission of compliance schedules, calculations of penalties for noncompliance, and related information. Any orders, payments, sanctions, or other requirements imposed pursuant to rules adopted under this division shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter and shall not affect any civil or criminal enforcement proceedings brought under any provision of this chapter or any other provision of state or local law. This division does not apply to any requirement of this chapter regarding the prevention or abatement of odors.

~~(T) Adopt procedures under which the director shall consider best available technology for the pollutants regulated by the new source performance standards established pursuant to the federal Clean Air Act in order to establish emission limits in installation permits issued pursuant to division (F) of this section. The emission limits shall be equivalent to those new source performance standards unless the standards are more than five years old or have not been reviewed by the United States environmental protection agency for more than five years. In determining what technology is best for a specific source application, the director may consider the extent to which a technology generates pollution or waste other than air emissions and shall approve the most cost effective among essentially similar efficient~~

control technologies as demonstrated by the permit applicant to the satisfaction of the director. Any facility that is subject to the federal prevention of significant deterioration regulations and major new source review shall comply with those regulations. Require new or modified air contaminant sources to install best available technology, but only in accordance with this division. With respect to permits issued pursuant to division (F) of this section beginning three years after the effective date of this amendment, best available technology for air contaminant sources and air contaminants emitted by those sources that are subject to standards adopted under section 112, Part C of Title I, and Part D of Title I of the federal Clean Air Act shall be equivalent to and no more stringent than those standards. For an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the federal Clean Air Act, best available technology only shall be required to the extent required by rules adopted under Chapter 119. of the Revised Code for permit to install applications filed three or more years after the effective date of this amendment.

Best available technology requirements established in rules adopted under this division shall be expressed only in one of the following ways that is most appropriate for the applicable source or source categories:

- (1) Work practices;
- (2) Source design characteristics or design efficiency of applicable air contaminant control devices;
- (3) Raw material specifications or throughput limitations averaged over a twelve-month rolling period;
- (4) Monthly allowable emissions averaged over a twelve-month rolling period.

Best available technology requirements shall not apply to an air contaminant source that has the potential to emit, taking into account air pollution controls installed on the source, less than ten tons per year of emissions of an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the federal Clean Air Act. In addition, best available technology requirements established in rules adopted under this division shall not apply to any existing, new, or modified air contaminant source that is subject to a plant-wide applicability limit that has been approved by the director. Further, best available technology requirements established in rules adopted under this division shall not apply to general permits issued prior to January 1, 2006, under rules adopted under this chapter.

For permits to install issued three or more years after the effective date

of this amendment, any new or modified air contaminant source that has the potential to emit, taking into account air pollution controls installed on the source, ten or more tons per year of volatile organic compounds or nitrogen oxides shall meet, at a minimum, the requirements of any applicable reasonably available control technology rule in effect as of January 1, 2006, regardless of the location of the source.

(U) Consistent with section 507 of the federal Clean Air Act, adopt, modify, suspend, and rescind rules for the establishment of a small business stationary source technical and environmental compliance assistance program as provided in section 3704.18 of the Revised Code;

(V) Provide for emissions trading, marketable permits, auctions of emission rights, and economic incentives that would reduce the cost or increase the efficiency of achieving a specified level of environmental protection;

(W) Provide for the construction of an air contaminant source prior to obtaining a permit to install pursuant to division (F) of this section if the applicant demonstrates that the source will be installed to comply with all applicable emission limits and will not adversely affect public health or safety or the environment and if the director determines that such an action will avoid an unreasonable hardship on the owner or operator of the source. Any such determination shall be consistent with the federal Clean Air Act.

(X) Exercise all incidental powers, including adoption of rules, required to carry out this chapter.

The environmental protection agency shall develop a plan to control air pollution resulting from state-operated facilities and property.

SECTION 2. That existing section 3704.03 of the Revised Code is hereby repealed.

**Section 3.** The General Assembly hereby finds and declares its intention that no part of this act shall be interpreted or applied to encourage, facilitate, allow, or otherwise result, directly or indirectly, in the establishment or reestablishment of a motor vehicle inspection and maintenance program in any part of this state in which a motor vehicle inspection and maintenance program is not operating on the effective date of this act. Further, the General Assembly hereby finds and declares its intention that no part of this act shall be interpreted or applied to encourage, facilitate, allow, or otherwise result, directly or indirectly, in the extension of the motor vehicle inspection and maintenance program in any part of this state in which it is operating on the effective date of this act beyond December 31, 2007, as required by section 3704.14 of the Revised Code. The General Assembly further directs the Director of Environmental Protection to take all necessary actions to ensure that, in implementing the provisions of this act, the Director does nothing to bring about the institution, reinstatement, or extension of the motor vehicle inspection and maintenance program, as applicable, in any part of the state.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_