Eric Vendel
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Legislative Service Commission

Am. Sub. S.B. 265

126th General Assembly
(As Passed by the General Assembly)

Sens. **Spada, Carey, Mumper, Niehaus, Amstutz, Armbruster, Clancy, Stivers, Goodman, Harris, Wachtmann**

Reps. **Trakas, Hagan, Wolpert, Combs, Collier, Reinhard, Law, Cassell, Buehrer, Faber, Flowers, Gibbs, Gilb, Hood, Martin, McGregor, J., McGregor, R., Patton, T., Schaffer, Seitz, Setzer, Uecker, Webster, Widener, Widowfield**

Effective date: *

ACT SUMMARY

- Requires the Director of Environmental Protection to consider the overall cost within Ohio of compliance with rules when adopting rules for the prevention, control, and abatement of air pollution.

- Requires the Director to adopt a rule specifying that a permit to install is required only for new or modified air contaminant sources that emit 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, an air contaminant for which the air contaminant source is regulated under the federal Clean Air Act, or an air contaminant that presents, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects or a threat of adverse environmental effects.

- Authorizes the Director to modify the rule establishing the list of air contaminants identified because of their adverse effects on human health or the environment for the purpose of adding or deleting air contaminants, and establishes procedures that the Director must follow to do so.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Requires an application for a permit to install for a new or modified air contaminant source to contain sufficient information regarding air contaminants for the Director to determine conformity with the Environmental Protection Agency's air toxics guidance document, and requires the Director to use that document to evaluate toxic emissions from new or modified sources.

- Requires the maximum acceptable ground level concentration of an air contaminant to be calculated in accordance with the air toxics guidance document, and authorizes the Director to establish terms and conditions in a permit to install regarding an air contaminant for purposes of maintaining emissions of the air contaminant with the modeled level if modeling indicates a specified ground level concentration.

- Prohibits the act's air toxics provisions and the air toxics guidance document from inclusion in the state implementation plan under the federal Clean Air Act, and states that they do not apply to particular air contaminants pursuant to federal requirements.

- States that the act's air toxics provisions and the air toxics guidance document do not apply to a list of specified source categories, and authorizes the Director to adopt rules that add source categories to or delete source categories from the list.

- Authorizes the Director to require an individual air contaminant source that is in one of the exempt source categories to submit information in a permit to install application in order to determine the source's conformity to the air toxics guidance document if the Director has information to conclude that the source may cause an increase in ground level concentration beyond the maximum acceptable concentration as set forth in the document.

- Specifies that a permit to install is not required for activities that are subject to and in compliance with a plant-wide applicability limit issued by the Director.

- Prohibits the Director from imposing additional air quality monitoring requirements for an air contaminant source when a specific monitoring, record-keeping, or reporting requirement is established for that source under applicable federal regulations or state rules except as otherwise

agreed to by the owner or operator of the air contaminant source and the Director.

- 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, prohibits the Director from requiring an operating restriction with respect to an air contaminant source that has the practical effect of increasing the stringency of an existing applicable emission limitation or standard.

- Repeals provisions in former law related to best available technology, and instead, with respect to permits to install issued beginning three years after the act's effective date, specifies that best available technology for air contaminant sources and air contaminants emitted by those sources that are subject to standards adopted under specified provisions of the federal Clean Air Act must be equivalent to and no more stringent than those federal 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, specifies that best available technology only can be required to the extent required by rules for permit to install applications filed three or more years after the act's effective date.

- Specifies that best available technology requirements are not permitted to 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.

- Specifies that best available technology requirements established in rules adopted under the act are not permitted to 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 or to general permits issued prior to January 1, 2006, under rules adopted under the Air Pollution Control Law.

- For permits to install issued three or more years after the act's effective date, requires 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 to 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.

- Declares that it is the General Assembly's intention that the act will not encourage, facilitate, or otherwise result in the establishment, reestablishment, or retention of the motor vehicle inspection and maintenance program in Ohio.

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CONTENT AND OPERATION

Introduction

The federal Clean Air Act was initially enacted by Congress in 1970 and received major updates in 1977 and 1990. The Act mandates certain air pollution control requirements and establishes national ambient air quality standards and measures that must be used by the states to achieve those standards. Ohio has responded to the federal Clean Air Act by enacting the Air Pollution Control Law. The Ohio Environmental Protection Agency (OEPA) is charged with implementing that Law. The Agency must develop programs for the prevention, control, and abatement of air pollution. Many of the programs established by the OEPA under the state Air Pollution Control Law are derived from federal requirements. The act makes changes to certain aspects of the Air Pollution Control Law governing permits to install for sources of pollution, air pollution monitoring devices, and best available technology.

Air pollution control rules

Continuing law requires the Director of Environmental Protection to adopt 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 established by the federal Clean Air Act. In adopting the rules, the Director, to the extent consistent with the federal Clean Air Act, must hear and give consideration to certain evidentiary factors. One such factor is evidence relating to conditions calculated to result from compliance with the rules and their relation to benefits to the people of the state to be derived from that compliance. The act also requires the Director to consider the overall cost within Ohio of compliance with the rules. (Sec. 3704.03(E).)

Rules related to permits to install

Continuing law requires the Director to adopt rules requiring the issuance of a permit to install[1] prior to 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. Applications for permits to install must be accompanied by plans, specifications, construction schedules, and other pertinent information and data. Further, the Director is required to specify in each permit applicable emission standards. (Sec. 3704.03(F).)

List of air contaminants. The act requires the Director, not later than two years after the act's effective date, to adopt a rule in accordance with the Administrative Procedure Act specifying that a permit to install is required only for new or modified air contaminant sources that emit any of the following air contaminants:

(1) 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;

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

(3) An air contaminant that presents, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects, including, but

[1] *Under continuing law, the term "installation permit" is used as well as the term "permit to install." The term "permit to install" is the more commonly used term by the OEPA and members of the public. Therefore, the act's amendments refer only to "permits to install" and not "installation permits." However, legally there is no distinction between the two terms.*

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 (sec. 3704.03(F)(3)).

With respect to air contaminants identified because of their threat of adverse effects on human health or the environment (see item (3), above), the act authorizes the Director to modify the rule establishing the list of air contaminants for the purpose of adding or deleting air contaminants. For each air contaminant that is contained in or deleted from the rule, the Director must 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 by the act and should be added to, or no longer meets the criteria and should be deleted from, the list of air contaminants. The explanation must include an identification of the scientific evidence on which the Director relied in making the determination. Until adoption of the new rule specified in item (3), above, the act declares that nothing will affect the Director's authority to issue, deny, modify, or revoke permits to install under the Air Pollution Control Law.

Air toxics. The act requires an application for a permit to install a new or modified air contaminant source to contain sufficient information regarding air contaminants for which the Director may require a permit to install to determine conformity with the OEPA's document entitled "Review of New Sources of Air Toxics Emissions, Option A," dated May 1986 (air toxics guidance document), which the act requires the Director to use to evaluate toxic emissions from new or modified air contaminant sources. The Director must make copies of the document available to the public upon request at no cost and post the document on the OEPA's web site. Any inconsistency between the document and the act must be resolved in favor of the act. (Sec. 3704.03(F)(4)(a).)

The act requires the maximum acceptable ground level concentration of an air contaminant to be calculated in accordance with the air toxics guidance document. In addition, modeling must 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 must 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 must 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 that determination, the Director must give consideration to the modeling conducted under the act and other relevant information submitted by the applicant. (Sec. 3704.03(F)(4)(b).)

If the modeling conducted 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 80%, but less than 100% 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 must be expressed as allowable emissions per day. In order to calculate the allowable emissions per day, the Director must multiply the hourly emission rate modeled to determine the ground level concentration by the operating schedule that has been identified in the application. The act specifies that such terms and conditions are not federally enforceable requirements and, if included in a Title V permit, must be placed in the portion of the permit that is only enforceable by the state. (Sec. 3704.03(F)(4)(c).)

If the modeling conducted 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 80% of the maximum acceptable ground level concentration, the act requires the owner or operator of the source annually to 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 application. The annual report is in lieu of an emission limit or other permit terms and conditions imposed pursuant to the act. The Director may consider any significant departure from the operations of the source described in the 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 act specifies that the above provisions are not federally enforceable requirements and, if included in a Title V permit, must be placed in the portion of the permit that is only enforceable by the state. (Sec. 3704.03(F)(4)(d).)

The act specifies that its air toxics provisions and the air toxics guidance document cannot be included in the state implementation plan under 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

specified provisions of the federal Clean Air Act, to a particular air contaminant identified under specified federal regulations 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 specified federal regulations for that particular air contaminant (sec. 3704.03(F)(4)(e)).

The act states that its air toxics provisions and the air toxics guidance document 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. However, the Director may require an individual air contaminant source that is within one of those source categories 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. The Director may adopt rules in accordance with the Administrative Procedure Act that are consistent with the purposes of the Air Pollution Control Law and that add to or delete from the source category exemptions established under the act. (Sec. 3704.03(F)(4)(f).)

Construction prior to the issuance of a permit to install. The act requires the Director, not later than one year after the act's effective date, to adopt rules in accordance with the Administrative Procedure Act 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 must 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. The act declares that any activity that is undertaken by the source under those rules is at the risk of the owner or operator. Further, the act specifies that the rules do not apply to

activities that are precluded prior to permit issuance under specified provisions of the federal Clean Air Act. (Sec. 3704.03(F)(5).)

Permit exemption for activities subject to plant-wide applicability limit

The act specifies that a permit to install is not required for activities that are subject to and in compliance with a plant-wide applicability limit issued by the Director in accordance with rules (sec. 3704.03(F)(2)).

Monitoring devices

Under law revised in part by the act, the Director may require the person responsible for any air contaminant source to install, employ, maintain, and operate emissions, ambient air quality, meteorological, or other monitoring devices or methods that the Director prescribes. The act requires the owner or operator of an air contaminant source, rather than the person responsible for any air contaminant source, to conduct such activities. Further, under continuing law, the Director may require the person (owner or operator under the act) to sample emissions at such locations, at such intervals, and in such manner as the Director prescribes and 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. In requiring monitoring devices, records, and reports, the Director, to the extent consistent with the federal Clean Air Act, must give consideration to technical feasibility and economic reasonableness and allow reasonable time for compliance. (Sec. 3704.03(I).)

The act adds provisions that state that 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 cannot impose an additional requirement in a permit that is a different monitoring, record-keeping, or reporting requirement other than the requirement specified in that applicable regulation or rule for that air contaminant except as otherwise agreed to by the owner or operator of an 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. Further, the act specifies that 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 cannot require an operating

restriction that has the practical effect of increasing the stringency of an existing applicable emission limitation or standard. (Sec. 3704.03(I).)

Best available technology

Under prior law, the Director was authorized to adopt procedures under which the Director was required to 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 permits to install. The emission limits were required to be equivalent to those new source performance standards unless the standards were more than five years old or had not been reviewed by the United States Environmental Protection Agency for more than five years. In determining what technology was best for a specific source application, the Director could consider the extent to which a technology generated pollution or waste other than air emissions and was required to 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 was subject to the federal prevention of significant deterioration regulations and major new source review was required to comply with those regulations. (Sec. 3704.03(T).)

The act repeals the above provisions and instead authorizes the Director to require new or modified air contaminant sources to install best available technology, but only in accordance with the act's provisions. With respect to permits to install issued beginning three years after the act's effective date, best available technology for air contaminant sources and air contaminants emitted by those sources that are subject to standards adopted under specified provisions of the federal Clean Air Act must 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 must only be required to the extent required by rules adopted under the Administrative Procedure Act for permit to install applications filed three or more years after the act's effective date. (Sec. 3704.03(T).)

Best available technology requirements established in rules adopted under the act must 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 12-month rolling period; or

(4) Monthly allowable emissions averaged over a 12-month rolling period (sec. 3704.03(T)(1) to (4)).

Best available technology requirements are not permitted to 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. Best available technology requirements established in rules adopted under the act also are not permitted to 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 the act cannot apply to general permits issued prior to January 1, 2006, under rules adopted under the Air Pollution Control Law. (Sec. 3704.03(T).)

The act adds that for permits to install issued three or more years after the act's effective date, 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 must 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 (sec. 3704.03(T)).

Policy on motor vehicle emissions inspection program

The act states that the General Assembly finds and declares its intention that no part of the act can 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 Ohio in which such a program is not operating on the effective date of the act. Further, the act states that the General Assembly finds and declares its intention that no part of the act can 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 Ohio in which it is operating on the act's effective date beyond December 31, 2007, as required under continuing law. Finally, the act states that the General Assembly further directs the Director of Environmental Protection to take all necessary actions to ensure that, in implementing the act's provisions, the Director does nothing to bring about the institution, reinstitution, or extension of the motor vehicle inspection and maintenance program, as applicable, in any part of Ohio. (Section 3.)

HISTORY

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