

improve implementation of its PSD rules through EPA's ongoing review of OEPA's program. *See* Draft Report on U.S. EPA Review of Ohio Environmental Programs, August 30, 2001, United States Environmental Protection Agency. Any concerns that USEPA finds as a result of this review will be addressed through the process of the aforementioned review.

Today's approval only addresses whether or not specific provisions of Ohio's administrative code meet the Federal CAA criteria for an NSR program, and does not address any issues regarding how the code is, or will be, applied or enforced by Ohio. We believe that the submitted rules meet the criteria for approval under the CAA and no particular findings or conclusions pertaining to the EPA petition review should be inferred from today's approval.

(2) The public participation process in Ohio is flawed, and should be corrected before approval of Ohio's rules.

*Response:* The submitted rules comply with Federal NSR requirements for public participation under the CAA. Any concerns, if any, that U.S. EPA may have with Ohio's public participation process under Ohio's PSD program will be addressed through the ongoing review of Ohio's program. *See* response to comment #1.

(3) The approval should be withheld because OEPA does not have a training program that ensures a minimum level of training and consistency across the state, and because it currently has a very high level of vacancies with no system in place to expeditiously fill those vacancies.

*Response:* The submitted rules comply with Federal NSR requirements under the CAA. Any concerns, if any, that U.S. EPA may have with the level of vacancies under Ohio's PSD program will be addressed through the ongoing review of Ohio's program. *See* response to comment #1.

(4) The approval would take OEPA's NSR permitting activities from Federal scrutiny and move appeal jurisdiction from EPA to OEPA. Such transitions remove Federal safety measures.

*Response:* Under the Clean Air Act, this approval will not change our level of scrutiny of OEPA's permitting activities. We will retain oversight over OEPA's NSR program, and will continue to require public involvement in the program. The approval will also have no effect on appeal jurisdiction because nonattainment-area permits can only be appealed through the State.

(5) The approval should incorporate by reference all currently outstanding SIP changes, rather than merely on the

March 1, 1996, revision request and several subsequent revisions.

*Response:* This final approval does not address SIP changes dated after August 19, 1999, because those changes have not been subjected to public notice. This approval only addresses the following: (1) All nonattainment NSR SIP changes dated on or before April 21, 1998, which were made available for public comment in the April 22, 1996, proposal for conditional approval and the February 21, 2002, proposed approval; (2) The August 19, 1999, SIP changes for public notice procedures pertaining to both attainment and nonattainment-area permits, which were made available for public comment in the February 21, 2002, proposed approval. For SIP changes dated after August 19, 1999, we will take a separate action to ensure that the public is given proper opportunity to comment on those changes.

(6) In the definition for "major stationary source," the submitted rules exclude pollutants regulated under CAA section 112 for attainment-area sources subject to 100-ton-per-year thresholds, while Federal regulations do not provide for such an exclusion.

*Response:* CAA section 112 is a separate program and is not regulated through NSR. NSR does not require the application of 100-ton-per-year thresholds to section 112 pollutants. In fact, CAA section 112(b)(6) prohibits the application of Prevention of Significant Deterioration (PSD) rules to the section 112 pollutants. Therefore, the rule that is the subject of this comment, OAC 3745-31-01 (SS), is consistent with the Federal definition.

(7) OEPA's definition for "major stationary source" is provided for attainment and nonattainment areas, but not for unclassified areas.

*Response:* As is inferred from the equal treatment of attainment and unclassified areas in 40 CFR 52.21(b)(14)(iii)(a), 52.21(b)(15)(i), and 52.21(i)(3), the Federal definition for "major stationary source" applies to unclassified areas and attainment areas equally. We interpret the submitted OEPA rule, OAC 3745-31-01 (SS), to carry the same inference. Therefore, "major stationary source" need not be defined separately for unclassified areas.

(8) In determining whether there has been a net emissions increase, the submitted rules limit the consideration of fugitive emissions to those source categories having 100-ton-per-year thresholds. The Federal regulations have no such limitation.

*Response:* We disagree that the Federal regulations have no such

limitation. Under 40 CFR 51.165(a)(1)(iv)(C) and 51.165(a)(4), State rules may exempt fugitive emissions from consideration for a major source or major modification unless the source belongs to one of the source categories having 100-ton-per-year thresholds or the source is subject to section 111 (New Source Performance Standards) and section 112 (National Emissions Standards for Hazardous Air Pollutants) of the Clean Air Act. The Ohio rule, OAC 3745-31-01 (RR) is consistent with the Federal rules.

(9) In the submitted rules, the use of alternative fuel or raw material is exempted from the definition of "major modification" if the source was capable of accommodating it before December 21, 1976. It also exempts emission increases caused by increases in hours of operation or production rate if those increases were not prohibited by a Federally enforceable permit condition established after December 21, 1976. However, the Federal regulations set the critical date for both of these exemptions at January 6, 1975, not December 21, 1976.

*Response:* This comment refers to the Federal PSD rules at 40 CFR 51.166(a)(2)(iii)(e)-(f), which apply the January 6, 1975 date. The PSD rules are not relevant to today's approval, which addresses general and nonattainment NSR provisions. The submitted rule, OAC 3745-31-01(RR)(5)(a), applies the December 21, 1976, date required by the nonattainment NSR rules at 51.165(a)(1)(v)(C)(5)-(6). Therefore, the Ohio rule is consistent with the Federal rule.

(10) In the definition for "major modification," the submitted rules state that alternative fuel or raw material can be used as long as "the stationary source is approved to use under any permit issued under this ruling." The "ruling" to which this sentence refers to is unclear.

*Response:* We disagree that the word "ruling" is unclear in OAC 3745-31-01(RR)(5)(b). In the context of the definition, "ruling" refers to a permit issued under Ohio's SIP.

(11) The Federal definition for "net emissions increase" provides that an increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. OEPA's version of this definition, however, restricts only the consideration of sulfur dioxide and particulate matter (leaving out nitrogen oxides).