

*D. Limitation of Deviation Reports to Deviations Detected by Compliance Methods Required by Permits*

1. Background

OAC 3745-77-07(A)(3)(c)(ii) and (iii) limits the reporting of deviations to those which can be detected by the compliance method required by the permit. This limitation is contrary to the requirements of the Act and 40 CFR part 70. Specifically, section 70.6(a)(3)(iii)(A) requires that permittees submit reports of required monitoring at least every 6 months and that all instances of deviations from permit requirements be identified in these reports. Section 70.6(a)(3)(iii)(B) requires that permittees promptly report deviations from permitting requirements to the permitting authority. Section 70.6 does not provide for any exceptions to these requirements. Section 113(c)(2) of the Act, among other things, prohibits any person from knowingly making a false certification or omitting material information from any reports. Finally, 40 CFR 70.5(d) and 70.6(a)(3) require responsible officials to certify that all reports are true, accurate and complete. *See also* 62 FR 8314 (February 24, 1997) (final rule promulgating credible evidence revisions). Together these statutory and regulatory requirements obligate sources to consider all available material information in evaluating and reporting deviations for purposes of promptly reporting deviations and submitting reports of any required monitoring at least semi-annually. Because Ohio's rule, OAC 3745-77-07(A)(3)(c)(ii)-(iii), only requires permittees to consider compliance method test data when reporting deviations from permit requirements, Ohio's Title V program does not meet the minimum requirements of part 70.

2. Proposed Changes to Deviation Provisions

Ohio has proposed a number of changes to OAC 3745-77-07(A)(3)(c)(ii) and (iii). Under the proposal, the language in OAC 3745-77-07(A)(3)(c)(ii) requiring the permittee to include in its six-month monitoring reports only those deviations "that have been detected by the compliance method required under the permit" would be deleted. Clarifying language would be added requiring that the reports "clearly identify" deviations from "the permit requirements that have occurred since the previous report has been submitted."

Under the proposal, OAC 3745-77-07(A)(3)(c)(iii) would be changed to reflect that prompt reports of deviations required under this provision will

include the written and verbal malfunction reports required by OAC 3745-15-06. Prompt reporting would be further defined by the proposed OAC 3745-77-07(A)(3)(c)(iii) to be quarterly for all deviations from emission limitations, operational restrictions, and control device operating parameter limitations (except as prescribed in OAC 3745-15-06) and semi-annually for all deviations from monitoring, recordkeeping, and reporting requirements unless otherwise stated in the permit. The requirement that only deviations detected by the compliance method required under the permit would be removed along with the requirements for verbal reports. The verbal report requirements are also included in OAC 3745-15-06 and would, therefore, be duplicative here.

EPA believes that the proposed revisions to OAC 3745-77-07(A)(3)(c)(ii) and (iii) meet the requirements of the CAA and Part 70 for reports of required monitoring at least every six months and prompt reports of deviations. Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program if Ohio adopts in final regulations the proposed changes consistent with this notice. Final adoption of these changes by Ohio would adequately address the deficiencies in OAC 3745-77-07(A)(3)(c)(ii) and (iii) identified in the Notice of Deficiency.

*D. Other Proposed Changes to Ohio's Title V Regulations*

Ohio has also proposed other minor changes to its Title V operating permits program regulations, which EPA also proposes to approve.

1. Change to the Definition of Major Source

On November 29, 2002, Ohio changed its definition of major source in OAC 3754-77-01(W)(2)(aa) to make it consistent with the changes EPA made to Part 70 on November 27, 2001 (66FR 59161). As revised, the rule requires sources to consider all pollutants when counting fugitive emissions from facilities subject to Section 111 or 112 standards promulgated on or before August 7, 1980. Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program.

2. Addition of the Definition of Incorporation by Reference

Ohio proposes to add the definition of incorporation by reference in OAC 3745-77-01(NN), clarifying that referenced materials are made a part of the regulations. This definition is not required by part 70 but by Ohio law.

EPA proposes to approve this language as part of Ohio's Title V program.

3. Addition of the Definition of Uncontrolled Potential Emissions

On November 30, 2001, Ohio added the definition of "uncontrolled potential emissions" to OAC 3745-77-01(MM). Ohio defined uncontrolled potential emissions as the calculated annual emissions rate without any air pollution controls assuming 24 hours per day and 365 days per year of operation. If the emission unit has an inherent physical limitation, then the number of hours per day and days per year can be restricted to the maximum possible under the inherent physical limitation. The term "uncontrolled potential emissions" is used in the definition of insignificant activities and emissions levels (OAC 3745-77-01(U)(3)). Ohio has changed OAC 3745-77-01(U)(3) to clarify that insignificant activities and emissions levels, in part, are emission units with uncontrolled potential emissions of five tons or less per year of any regulated air pollutant other than a hazardous air pollutant as opposed to emissions units with the potential to emit five tons or less per year. Potential to emit includes any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Uncontrolled potential emissions only considers inherent physical limitation. EPA proposes to approve this language as part of Ohio's Title V program.

**III. Final Action**

EPA is proposing to approve as revisions to Ohio's CAA Title V operating permits program proposed revisions to Ohio's regulations for IEUs, specifically, revisions to OAC 3745-77-02(E), 3745-77-07(A)(13), 3745-77-07(A)(3)(c)(ii) and (iii), 3745-77-07(I), and 3745-77-08(C). EPA has determined that the proposed changes meet the requirements of Title V and Part 70 relating to IEUs and reporting and adequately address the deficiencies identified in the Notice of Deficiency published in the **Federal Register** on April 18, 2002 (67 FR 19175). EPA is also proposing to approve Ohio's new provisions at 3745-77-01(U), 3745-77-01(W)(2)(aa), 3745-77-01(MM) and 3745-77-01(NN). Because the proposed revisions apply throughout the State of Ohio, this proposed approval applies to all State and local agencies that implement Ohio's operating permits program.