

## Engineering Guide #86: Guidance Concerning Appropriate 31-05 Rule Citations

### THIS GUIDE DOES NOT HAVE THE FORCE OF LAW

#### Question:

What are some of the common rule citations from Ohio Administrative Code (OAC) rule 3745-31-05 and how should they be used?

#### Answer:

Rule 31-05 contains a number of requirements that must be met in order for the Director to issue a permit-to-install (PTI) or a permit-to-install and operate (PTIO). When appropriate, the Director describes the applicable requirement and the associated rule citation within the permit.

Some of the rule requirements are confusing and seem to overlap. In order to help consistency in permit writing, the following describes the use of many common rule citations<sup>1</sup>. Note that the entire 2008 version of rule 31-05 (the current one) is SIP approved except for the paragraph that exempts <10 tons sources. Except where noted, the below cites are all based on the June 2, 2008 version of the rule.

#### *Best Available Technology Rule Citations*

- 3745-31-05(A)(3) – BAT
  - Use for establishing BAT.
  - Use for establishing a temporary BAT for <10 tons sources that applies until such time that U.S. EPA approves the <10 tons BAT exemption into the SIP.
- 3745-31-05(A)(3)(a)(ii) - < 10 tons BAT exemption
  - Use this citation when the controlled/uncontrolled PTE of a pollutant is <10 tpy, therefore BAT exempt.

#### *Synthetic Minor Type Rule Citations*

- 3745-31-05(D) – Director May Impose Special Terms And Conditions

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<sup>1</sup> Please note that this guide does not include guidance on all rule cites within paragraph 31-05. Instead, it discusses only some of the commonly used rule cites.

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This rule cite is most often used for PTI, PTIO, FEPTIO synthetic minor terms and conditions used to avoid federal rules or laws. It is best to cite 31-05(D) rather than the more explicit 31-05(D)(1)(a) or 31-05(D)(1)(b) for installation permits or FEPTIOs, respectively. It can also be used for:

- Establishing federally enforceable restrictions used to avoid various federal rule requirements (most commonly PSD, NNSR, Title V and MACTs)
- Terms to ensure compliance with applicable laws (could be used for many laws)
- Terms to ensure adequate protection of environmental quality (could be used for terms used to maintain the health, safety and welfare of the public)
- Terms to ensure compliance with the CAA (could be used for many requirements found under the CAA)
- Terms to establish an emissions cap for the purposes of tradable emissions
- Terms from federal consent orders that are used to ensure compliance with applicable laws and to ensure adequate protection of environmental quality

Note that the restrictions established under this rule must meet U.S. EPA's requirements for federally enforceability.

### *State-Only Rule Citations*

- 3745-31-05(E) – State-only Enforceable Limitations

This rule cite should be used for limitations that are enforceable by the State, but not by U.S. EPA. Some examples include:

- Restriction that allows a source to avoid BAT for <10 tons sources (Note, this cite can be used both before U.S. EPA approves the <10 tons exemption and after U.S. EPA approves the <10 tons exemption.)
- Air toxics terms (the air toxic rule and the air toxic policy are not in the SIP)
- Limitations used to avoid state modeling requirements
- Limitations used to avoid tripping one part of the modify definition - 3745-31-01(QQQ)(1)(b) concerning tripping the modify definition via changes that increase the ambient impact of the pollutant (this paragraph is not in the SIP)
- Consent decree requirements that are State-only enforceable
- Other restrictions or terms and conditions that are based on state rules that are not SIP approved

### *Voluntary Limits Citations*

- 3745-31-05(F) – Voluntary Limits on Allowable Emissions

This rule cite is designed to allow a company to submit a PTI or PTIO in order to add a restriction that is not required by any rule or law and is not being used to avoid any rule or law requirement. This should not be used if the modify definition is tripped. Some examples include:

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- If a company decides to install an incinerator in order to control odors but the incinerator would not otherwise be required.
- If a company asks us to put a restriction into the permit based on some agreement they have with an environmental group and the restriction is not otherwise required.
- State or federal consent decree requirements where the decree requires something to be placed in a permit that is not otherwise required by an underlying law or rule.

In that case, any restrictions/limits we establish would be voluntary. These kinds of restrictions/limits can be removed at any time upon request of the permittee. For this type of voluntary PTI/PTIO, a new BAT limit would not be established.

Note that the above descriptions are not the only situations where the above rule cites might be used. Other requirements may apply where it is appropriate to use one or more of the above rule cites.

Permit writers that are unsure which rule citation to use for a particular requirement should contact their central office permit contact for advice.

*Key Words: Citation, cite, BAT, Best Available Technology, Voluntary, State-only, Synthetic Minor, FEPTIO, PTI*

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