



Interested Party Review – OAC Rule 3745-77-07 Permit Content under Ohio’s Title V Program

What does OAC Chapter 3745-77-07 cover?

Rule 3745-77-07 of the Ohio Administrative Code (OAC) is the rule governing the contents of Title V Permits. Historically, it included provisions for emergency affirmative defense. Under Title V of the Clean Air Act, Ohio is required to develop an operating permit program for major sources of air pollution. The operating permit program streamlines the way federal, state, tribal and local authorities regulate air polluting by consolidating all air pollution control requirements into a single, comprehensive “operating permit” that covers all aspects of a source’s year-to-year air pollution activities.

What step is this in the rulemaking process?

This step in Ohio EPA’s rulemaking process, required by Ohio Revised Code (ORC) 121.39, is called Interested Party Review. During this step, the agency makes available draft rules for interested parties for review and comment. This step occurs after the Early Stakeholder Outreach comment period.

What types of changes are being considered?

U.S. EPA published a final rule on July 21, 2023, removing the “emergency” affirmative defense provisions from the U.S. EPA’s Part 70 operating permit program regulations at 40 CFR 70.6(g). This action required Ohio EPA to remove the affirmative defense provisions from Ohio EPA’s Title V rules.

On September 5, 2025, the D.C. Circuit Court of Appeals in *SSM Litigation Group v. Environmental Protection Agency, et al.*, Case No. 23-1267 (D.C. Cir. 2025), reversed U.S. EPA’s rescission of the narrow affirmative defense under Title V of the Clean Air Act. This defense protects stationary sources – such as manufacturing facilities and refineries – from liability for violations of Clean Air Act emission limitations under Title V when the violation is a result of emergency events.

Ohio EPA believes it is appropriate to add the “emergency” affirmative defense provisions back in to the Title V rules, which will be included in paragraph (G) of OAC rule 3745-77-07.

What additional information is the agency seeking?

The agency is seeking comments from interested stakeholders (public, local officials, permit holders, industry sectors, other state agencies, consultants, and environmental organizations) who may be impacted by these draft rule amendments. General comments and specific factual information are welcome. In addition to the draft rule amendments, Ohio EPA is also seeking comments and feedback on the draft Common Sense Initiative (CSI) Business Impact Analysis form, which is being released with these draft rules during interested party review.

Who will be regulated by these rules?

The rules in OAC Chapter 3745-77 are applicable to facilities which are considered major sources of pollution.

How are the amendments formatted in the draft rules?

(G) Emergencies.

- (1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including unpreventable natural disasters, which situation requires immediate corrective action to restore normal operation.

Draft Rules – OAC Rule 3745-77-07 Permit Content under Ohio’s Title V Program

and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

- (2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (G)(3) of this rule are met.
- (3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence showing all of the following:
 - (a) An emergency occurred and the permittee can identify the cause(s) of the emergency.
 - (b) The permitted facility was being properly operated at the time.
 - (c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.
 - (d) The permittee submitted notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency. Such notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. This notice fulfills the requirements of paragraph (A)(3)(c)(iii) of this rule.
- (4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof with regard to the occurrence of the emergency.
- (5) The emergency defense provision in paragraph (G) of this rule is in addition to any emergency or upset provision contained in any applicable requirement.

What is the rulemaking schedule?

The agency is currently soliciting input on these draft rule revisions. Ohio EPA is required by section 121.39(D) of the Revised Code to contact potentially affected parties prior to adopting rule changes. At the close of the draft rule comment period, the agency will review the comments and make necessary changes to the rules. The agency will then file proposed rules with the Joint Committee on Agency Rule Review, the Legislative Service Commission and the Secretary of State. Ohio EPA expects to file the proposed rules in October. At that point, another comment period, including one or more public hearings, will be scheduled. After the close of the comment period, the agency will review the comments, make any necessary changes and then adopt the final rules.

How can I comment on the draft rules?

Please are two options for submitting your comments:

- Electronically through [SmartComment](#)
- Via postal mail to Rule Coordinator, Ohio EPA – Division of Division of Air Pollution Control, PO Box 1049, Columbus, Ohio 43216-1049

Written comments will be accepted until 5 p.m. on May 11, 2026.

Draft Rules – OAC Rule 3745-77-07 Permit Content under Ohio’s Title V Program

How can I get more information?

Information is available on the Ohio EPA website:

- Interested Party Rule Page
- Effective Rules Page

Contact

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