

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Ohio's "Permit-to-Install New Sources and Permit-to-Install and Operate" Program.

Rule Number(s): OAC Rule 3745-31-01

Date: November 1, 2016

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Administrative Code (OAC) rule 3745-31-01 is a part of Ohio's "Permit-to-Install New Sources and Permit-to-Install and Operate" Program.

On August 24, 2016, USEPA published their final rule in 81 FR 58010 regarding the requirements for state implementation plans (SIP) for attaining and maintaining the 2012

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

national ambient air quality standard (NAAQS) for particulate matter less than 2.5 microns in diameter (PM2.5).

As part of Ohio's SIP, Ohio EPA has performed a comprehensive precursor demonstration to show that volatile organic compounds (VOC) and ammonia (NH3) are an insignificant source of PM2.5 for the purpose of new source review in nonattainment areas. This rulemaking is intended to modify OAC rule 3745-31-01 to reflect this finding. The non-significance finding was submitted to USEPA as part of Ohio's attainment demonstration for the 2012 PM2.5 annual standard on October 14, 2016.

(<http://epa.ohio.gov/dapc/SIP/2013.aspx>)

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule Number	Authorizing Statute	Proposed Action
3745-31-01	3704.03(F), 3704.03(G)	Amended

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

Section 110 of the Clean Air Act (CAA) requires all states to develop a plan for attaining and maintaining the NAAQS. The rules in OAC chapter 3745-31 establish Ohio's New Source Review (NSR) permitting program as required by the CAA and the Code of Federal Regulations (CFR) Title 40, Chapter 52.21 to ensure that all new and modified sources of pollution are issued an air pollution permit. The rules in this chapter are a part of Ohio's SIP under Section 110 of the CAA.

The changes being proposed to this rule are intended to address USEPA's nonattainment NSR requirements in the final rule in 81 FR 58010 regarding the requirements for SIPs for attaining and maintaining the 2012 NAAQS for PM2.5. Changes will be proposed to USEPA as amendments to Ohio's SIP.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The rules in this chapter do not exceed federal requirements and are a part of Ohio's SIP as required under Section 110 of the CAA. The new amendments in this rulemaking are

designed to meet the federal requirements in USEPA's final rule in 81 FR 58010, but not exceed them.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules in OAC Chapter 3745-31 implement the federal New Source Review (NSR) requirements under the CAA to verify that all new and modified sources of air pollution obtain permits and meet all applicable air pollution control rules and regulations. OAC rule 3745-31-01 contains definitions and information on the version and availability of items referenced in the rules in this chapter.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules in OAC chapter 3745-31 require that all new and modified sources of air pollution apply for and obtain a permit-to-install (PTI) or a permit-to-install and operate (PTIO) before beginning installation and commencing operations. These permits identify the applicable air pollution control rules and regulations under which the source must operate and establishes monitoring, record keeping, testing and reporting requirements by which the sources can demonstrate compliance with the rules and regulations. Ohio EPA considers the rules a success when a source is issued a permit and can, thereby, commence operations in compliance with the applicable air pollution rules and regulations. The definitions contained in OAC rule 3745-31-01 are an important part of clarifying terms used throughout the chapter and in developing PTI's and PTIO's.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio EPA established an initial 30-day early stakeholder outreach period ending October 31, 2016. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,000+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

As noted above, Ohio EPA solicited comments from the public as well as holding several meetings with industry and trade groups on this rulemaking. Ohio EPA received one request for clarification from the Bemis company which also included a comment in support of the intended rulemaking.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Ohio EPA has performed a comprehensive precursor demonstration to show that VOC and ammonia are an insignificant source of PM_{2.5} for the purpose of NSR in nonattainment areas. The non-significance finding was submitted to USEPA as part of Ohio's attainment demonstration for the 2012 PM_{2.5} annual standard on October 14, 2016.

(<http://epa.ohio.gov/dapc/SIP/2013.aspx>) This rulemaking is intended to modify OAC rule 3745-31-01 to reflect this finding.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The alternative to this rulemaking is to allow VOC and ammonia to be considered a significant precursor to PM_{2.5} in the state of Ohio. This alternate will require sources to be subject to more stringent control for these compounds which will raise the cost of compliance. Based on the finding of insignificance, Ohio EPA felt that modifying the rules to exclude these compounds was that most desirable alternative.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The amendments to this rule are primarily administrative and exclude VOC and ammonia from the list of precursors for PM_{2.5} in the state of Ohio.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Ohio EPA is the only agency having jurisdiction over the control of air pollution. The rules in this chapter are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio EPA’s air pollution permitting program was originally implemented in 1974 and the rules in OAC Chapter 3745-31 have existed since that time. The amendments to the rule in this rulemaking will be implemented, once the amended rules become effective, through inclusion of the requirements in permits.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

This rule contains definitions and information on referenced items and there is no specific cost of compliance associated with these items. Overall, however, excluding VOC and ammonia from the permitting requirements will provide clarity to the process and reduce overall costs to the regulated community.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These changes are required to meet the requirements of 81 FR 58010 regarding the requirements for SIPs for attaining and maintaining the 2012 NAAQS for PM2.5. If this rule is not implemented, facilities in Ohio will need to control emissions of VOC and ammonia that otherwise would not be required as Ohio EPA has determined that these compounds are not a significant source of PM2.5 for the purpose of NSR in nonattainment areas.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

This rule contains definitions and does not provide any exemptions.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Ohio EPA uses enforcement discretion regarding fines and penalties for facilities committing a first-time violation are typically waived, however, there should be no need to issue a fine or penalty regarding the application process for these rules.

18. What resources are available to assist small businesses with compliance of the regulation?

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.
- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.