

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-77, "Title V Permitting Program"

Rule Number(s): OAC Rules 3745-77-01 to 3745-77-10

Date: May 22, 2017

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Rescinded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.

The rules in Ohio Administrative Code (OAC) Chapter 3745-77 address Ohio's requirements under Title V of the Clean Air Act (CAA). Title V of the CAA requires each state to develop a permit-to-operate (PTO) system and emission fee program for major sources of air pollution. Ohio's rules for this program became effective on April 20, 1994. The Title V permit for major sources is enforceable by Ohio EPA and U.S. EPA. Major sources must certify compliance with the terms of their permits annually.

Under Title V, major sources are those with a potential to emit:

- 100 tons per year or more of any one regulated pollutant (PM10, nitrogen oxides, sulfur dioxide, carbon monoxide, volatile organic compounds and lead).
- 10 tons per year or more of any one hazardous air pollutant (HAP), or
- 25 tons per year or more of any two or more HAPs

[Note: U.S. EPA currently lists 188 HAPs in Section 112 of the CAA]

Permits issued for major sources under this program are enforceable by Ohio EPA and U.S. EPA. Major sources must certify compliance with the terms of their permits annually.

Ohio EPA is currently performing a review of the rules as required under Ohio Revised Code (ORC) 106.03 and 106.031. Ohio EPA is updating rules to remove an incorrect paragraph referencing permit amendments, removing a paragraph that incorrectly exempted insignificant activities from Title V requirements, and adding a paragraph noting the requirements to follow federal Compliance Assurance Monitoring rules. Ohio EPA is also making various changes to typos and grammar throughout the chapter.

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

Rule Number	Authorizing Statute	Proposed Action
3745-77-01	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-77-02	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-77-03	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-77-04	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-77-05	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	No-change

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3745-77-06	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-77-07	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-77-08	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-77-09	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	Amended
3745-10-10	3704.03(E), 3704.03(G), 3704.03(X), 3704.036	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.**

Yes, these rules implement a federal requirement in Title V of the CAA that the state develop a PTO program for major sources. The CAA language is codified in 40 CFR part 70.

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

All sources (new & existing) must meet all applicable requirements on a facility-wide basis.

- 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 3745-77 implement the federal requirements under the CAA to verify that all major sources of air pollution obtain PTOs and meet all applicable air pollution control rules and regulations.

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

The rules in OAC Chapter 3745-77 require that all new and modified major sources of air pollution receive a (PTO) after 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, recordkeeping, 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 PTO and can, thereby, operate in compliance with the applicable air pollution rules and regulations.

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 will establish a 30-day public comment period. 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?**

Ohio EPA received one comment from stakeholders. The comment requested a change which Ohio EPA was not able to make as the change would not have been allowed under the federal requirements for the program.

- 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?**

The rules in OAC Chapter 3745-77 are not based on scientific data. The rules establish an administrative program through which air pollution control PTOs are prepared and issued to major sources.

- 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?**

There are no alternatives available to Ohio's Title V program. The rules in OAC Chapter 3745-77 establish Ohio's Title V permitting program based on federal requirements. The only alternative is to allow the U.S. EPA to operate the program. Allowing U.S. EPA to administer the program would not be in the best interest of facilities in the State of Ohio.

- 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 rules in OAC Chapter 3745-77 establish an administrative program through which Title V PTOs are prepared and issued to major sources. The process is dictated through federal requirements and there are very few, if any, ways by which this program can deviate. Ohio

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EPA does not feel it would be possible to operate this program efficiently and effectively as a performance-based program.

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, and is specifically directed, under ORC 3704.03(F) to issue air pollution control permits. 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 Title V permitting program was originally implemented in 1994 and the rules in OAC Chapter 3745-77 have existed since that time. The amendments to the rules in this rulemaking will be implemented, once the amended rules become effective, through inclusion of the requirements in Title V PTOs.

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.

The rules in this chapter put forth the requirement that a Title V PTO must be obtained if a facility meets one of five criteria identified in OAC rule 3745-77-02(B) unless exempted under OAC rule 3745-77-02(C). It is very difficult to estimate in dollars the cost of compliance with obtaining a Title V PTO. A facility will need to prepare an application first. Applications may be prepared and submitted by facility representatives or a facility may hire a consultant to prepare their application so that a facility representative can submit the application. The decision to hire a consultant often depends on the size of the facility, type of facility, and how complicated/extensive a historic air pollution permit record associated with the facility is. Additionally, depending on the applicable rules and when the operations were initially installed, the requirements can be very simple to very complicated. An application may take a facility a few hours to prepare and comprise 30 pages or less, or it could take

several months to prepare and contain hundreds of pages of documents. The cost to prepare these applications (and comply with permit requirements) can vary across a wide range being as little as \$100 to \$30,000 (typical estimated cost to have a larger project application be completed by a consulting firm). Ohio EPA does not charge an application fee.

The changes being proposed in this rulemaking do not add or remove any requirements and should not affect the cost of compliance with these rules.

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

As mentioned above, these rules fulfill a federal requirement in Title V of the CAA that requires all states to develop a permitting program for major sources of air pollution. The rules in OAC Chapter 3745-77 establish Ohio's Title V permitting program, as required by the CAA and 40 CFR Part 70 to ensure that all sources of pollution are issued a Title V PTO.

Also as mentioned above, the alternative to these rules is allowing U.S. EPA to operate the Title V permitting program. Allowing U.S. EPA to administer the program would not be in the best interest of facilities in the State of Ohio, both in terms of the fiscal cost of the program to facilities and in the time that would be required to obtain a permit. Ohio EPA currently averages about 180 days to review an application and issue a permit to a facility. In states where U.S. EPA operates the permitting program, issuance of permits can take three to five times longer than this which results in uncertainty in the business community as well as higher costs due to delays. For this reason, Ohio EPA feels that implementing the rules in OAC Chapter 3745-77 justifies the fiscal impact to businesses.

Regulatory Flexibility

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

The rules in OAC Chapter 3745-77 do provide exemptions in OAC rule 3745-77-02(C). The list of exempt sources is taken directly from the federal requirements which the rules are based on.

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.

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. The small business gateway is available to, and will provide answers for, businesses of all sizes.
- 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.