



Division of Air Pollution Control Response to Comments

Rules: 3745-31-01, 3745-31-03, 3745-31-05, 3745-31-06, 3745-31-11, 3745-31-13, 3745-31-14 and 3745-31-33 “Permits-to-Install New Sources and Permit-to-Install and Operate Program”

Agency Contact for this Package

Division Contact: Sudhir Singhal, Division of Air Pollution Control, (614) 644-3684, sudhir.singhal@epa.ohio.gov

Ohio EPA provided a 30 day comment period which ended on November 24, 2014. This document summarizes the comments and questions received during the associated comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

3745-31-01, “Definitions”

Comment 1: The definition of “Non-road engine” at OAC 3745-31-01(CCCC) should be made to match the federal definition(s) of “Nonroad engine” at 40 CFR 89.2 and/or 40 CFR 1068.30.

The ‘applicability’ paragraphs [§31-01(CCCC)(1)] are generally consistent, however the ‘non-applicability’ paragraphs [§31-01(CCCC)(2)] have some inconsistencies, for which I recommend the following revisions:

- §31-01(CCCC)(2)(d) should be removed [as in 40 CFR 89.2] OR merged into §31-01(CCCC)(2)(a) [as in 40 CFR 1068.30]
- §31-01(CCCC)(2)(e) language is not present in 40 CFR 89.2 or 40 CFR 1068.30, and should be removed
- §31-01(CCCC)(2)(f) language is not present in 40 CFR 89.2 or 40 CFR 1068.30, and should be removed

- **§31-01(CCCC)(2)(g) language is not present in 40 CFR 89.2 or 40 CFR 1068.30, and should be removed**
- **§31-01(CCCC)(2)(h) language is not present in 40 CFR 89.2 or 40 CFR 1068.30, and should be removed – because its effect is to keep small engines (<50 cc) from being exempt, while allowing the exemption of larger engines (>50 cc) – there is NO size cutoff similar to this in 40 CFR 1068.30**

As I wrote to a client last year, “I contacted Ohio EPA Central Office, and they acknowledge that it is counter-intuitive that larger ($\geq 50 \text{ cm}^3$) engines would be exempt from PTI requirements, and that smaller ($< 50 \text{ cm}^3$) engines would be subject to PTI requirements – they stated that this is “leftover” from a previous definition in the Federal rules from several years ago – and Ohio EPA plans to change this definition to remove the engine size restriction for PTI exemption applicability.” [Eric Tabor, P.E., President, Tabor Air Compliance]

Response 1: Thank you for your comment.

Ohio EPA concurs with your comment. Accordingly, we have revised 3745-31-01(CCCC)(1) which defines non-road engine. We have also revised language contained in 3745-31-01(CCCC)(2)(d) though (g) consistent with the language contained in 40 CFR Part 89.1(b). We have also removed 3745-31-01(CCCC)(2)(h) per your comment as small engines will be covered under OAC rule 3745-31-03(pp).

Comment 2: **Definition of emergency. In previous comments, the Utilities requested that Ohio EPA revise Ohio Adm.Code 3745-31-01(MM) to include all four definitions of emergency. As noted before, the rule inexplicably defines "emergency" in 3745-31-01(MM) using only three of the four categories that are in the existing definition of "emergency" within 3745-31-03(A)(4)(a)(viii)(a) while excluding the category where a regional transmission organization has identified conditions that require implementation of emergency plans to avoid electrical blackouts and other extreme conditions that jeopardize the electric grid. The existing and proposed rules both define emergencies to include "an electric power outage due to failure of**

the electrical grid." The Utilities do not think that Ohio EPA should exclude the emergency actions that are taken to avoid such outages and failure of the electrical grid. As in 3745-31-03(A)(4)(a)(viii)(a), the definition of "emergency" within 3745-31-01 (MM) should include emergencies called by a regional transmission organization and should read as follows:

(MM) "Emergency" means any of the following:

- (1) An emergency caused by flooding, damaging winds or tornado, fire, or other natural disaster.**
- (2) An electric power outage due to a failure of the electrical grid, local supply equipment failure, or facility equipment failure.**
- (3) Any situation that the director determines to be an immediate threat to human health, property, or the environment.**
- (4) Conditions where a regional transmission organization notifies electric distributors that an emergency exists or may occur and it is necessary to implement emergency procedures for voluntary load curtailments by customers within Ohio, in response to unusually low frequency, equipment overload, capacity or energy deficiency, unacceptable voltage levels, or other emergency conditions leading to a potential electrical blackout.**

In previous response to comments, Ohio EPA indicated that it was addressing Ohio Adm.Code 3745-31-03(A)(4)(a)(viii)(a) in a separate rulemaking. It appears that this is the rulemaking alluded to in the response to comments. Unfortunately, in the current rulemaking, Ohio EPA has deleted the definition of "emergency" in Ohio Adm.Code 3745-31-03. Thus, the only definition of "emergency" is in Ohio Adm.Code 3745-31-01 and this excludes the category addressing electrical blackouts and other extreme conditions that jeopardize the electric grid. The Utilities recommend that Ohio EPA either revise the definition of "emergency" in Ohio Adm.Code 3745-31-01 to include this provision (as

discussed above) or reinstate the provision in Ohio Adm.Code 3745-31-03. There is no defensible reason for deleting this provision from the rules and not revising 3745-31-01. [Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]

Response 2: Thank you for your comment.

Ohio EPA concurs with your comment. Accordingly, we have revised 3745-31-01(MM) as suggested.

Comment 3: **Please remove or amend the definitions for “permanent,” “quantifiable,” “surplus,” and “semi-public disposal system” as the Ohio Environmental Protection Agency (OEPA) described in its letter to EPA’s George Czerniak, emailed on August 26, 2014. [Genevieve Damico, Chief, Air Permits Section, US EPA Region V]**

Response 3: Thank you for your comment.

OAC Paragraphs 3745-31-01(QQQQ), (JJJJ), and (BBBBB), definitions of “permanent”, “quantifiable” and “surplus”:

Region 5 commented that DAPC’s definitions of “permanent”, “quantifiable” and “surplus” in OAC Chapter 31 are not defined in any federal rule, and therefore believes that these definitions need not be incorporated into the SIP.

DAPC included definitions for “Quantifiable”, “Permanent”, “Surplus” in order to clarify the verification process for an emission reduction credit (ERC) used for offsets under Nonattainment New Source Review.

As stated in the letter to US EPA’s George Czerniak dated March 26, 2015, Ohio EPA has withdrawn these definitions from incorporation into the SIP, and the definitions will serve only as clarifications for our Voluntary ERC Trading and Banking Program.

OAC Paragraph 3745-31-01(TTTTT), definition of “semi-public disposal system”:

Region 5 commented that DAPC's definition of "semi-public disposal system" is unnecessary as this term is not referenced in any rule under OAC Chapter 31.

DAPC is planning to add a new exemption to OAC rule 3745-31-03 that references the term "semi-public disposal system." Because rule 3745-31-01 was being revised ahead of the changes to the 3745-31-03 rule, we decided to go ahead and include the new exemption into 31-01 so that additional rulemaking would not be needed later. The new definition will be used only if and when the new exemption becomes effective.

3745-31-03, "Exemptions and permits-by-rule"

Comment 4: Why did the Ohio EPA only add 8 counties to paragraph B(2)(f) of 3745-31-03? Some of our members questioned why this requirement isn't extended to all 88 counties. We wanted to see if there was a reason for only expanding this to the 8 counties located in northeast Ohio. [Andrew Huffman, Manager of Public Affairs, Governmental Policy Group, Inc., also represents the Automotive Service Association of Ohio (ASA Ohio)]

Response 4: Thank you for your comment.

The additional 8 counties are needed to align the PBR with rule 3745-21-18, which is Ohio's rule that limits VOC emissions from auto body refinishing and only applies to 16 counties that need to reduce ground level ozone to meet EPA's ambient air quality standard. Rule 3745-21-18 is independent from the PBR and does not apply statewide. Rule 3745-21-18 first became effective in September 2006 for 8 counties in the Dayton and Cincinnati areas and the PBR in 3745-31-03 was amended separately in June 2008 to include the requirements of this rule for PBR shops in Dayton and Cincinnati. Rule 3745-21-18 was amended again in April 2009 to include 8 more counties in the Cleveland and Akron areas because they needed additional VOC regulations to reduce ozone. The recently proposed PBR amendments in 31-03 will finally "catch up" with the changes done to 21-18 and will incorporate the 21-18 requirements to PBR shops in all 16 counties where that rule applies. Ideally, the PBR in rule 31-03 should be amended

at the same time that any of the underlying rules are changed, but that sometimes is not possible.

The additional 8 counties do not affect who can use the PBR. Any shop in Ohio can choose to operate under the PBR provided the shop meets all of the qualifying criteria in B(f)(i)(a) through (g). It's always been that way. Once operating under the PBR, only the shops in 16 counties where rule 3745-21-18 applies (Dayton, Cincinnati, Akron, and Cleveland areas) need to comply with the additional requirements spelled out in the PBR for those counties.

One of the functions of the PBR is to list all of the separate air pollution rules in one place like a traditional hard copy air permit does. You can see this applicable rule list in the table of the auto body PBR. If Ohio EPA amends or changes any of these rules separately, the PBR must be amended later to match. That is what happened when 3745-21-18 was amended some time ago and the PBR is being amended now to match.

There are a number of reasons why rule 3745-21-18 does not apply to every county in Ohio. The fundamental reason is that areas with dirty air need to reduce pollution (VOC emissions in this case) through targeted regulations, whereas areas with clean air do not. The full explanation is a lot more complex and involves metropolitan planning organizations, urban airshed modeling, and USEPA requirements and guidelines for developing state regulations. If you want more info on that process, please contact Jennifer VanVlerah at (614) 644-3696.

Comment 5: **One of our members noticed a provision in 3745-31-03(B)(2)(f)(i)(d), which would require a facility claiming a PBR to “perform all painting operations in an enclosed spay booth which is designed to confine and direct the paint overspray, fumes, and vapors to a powered ventilation system and is equipped with either a dry filtration or water wash system to capture paint overspray.”**

One member was under the impression that the federal 6H rule allows repair facilities to use 3oz or less of primer outside of a booth. He said he heard of shops

claiming a PTIO of using this 6H rule as a standard, which allows them to spray up to 3oz outside of a spray booth and thought this rule would create a more stringent standard for those facilities claiming a PBR. Any clarification would be extremely helpful. [Andrew Huffman, Manager of Public Affairs, Governmental Policy Group, Inc., also represents the Automotive Service Association of Ohio (ASA Ohio)]

Response 5: Thank you for your comment.

This raises an interesting point for further evaluation by DAPC. The condition to perform all painting in an enclosed booth, as cited, is a qualifying criterion of the original PBR developed in 2004. That was developed before Ohio rule 3745-21-18 or the federal 40 CFR Part 63, Subpart HHHHHH - National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (hereinafter "6H rule") existed. The original intent was to confine and filter any overspray to prevent nuisances, i.e., paint spots on neighbor's cars or buildings, and to ensure VOC emissions were exhausted and dispersed with good stack design. These were considered best management practices (BMP) at the time, and in line with what Ohio EPA considered Best Available Technology. It was Ohio EPA's desire to have PBR sources meet a "clean screening" design concept to avoid the more intensive technical review normal to PTIO processing. Ohio EPA incorporated these BMPs into the PBR qualifying criteria to alleviate any nuisance concerns and to ensure proper dispersion of pollutants in compliance with DAPC's Air Toxics Rules. ASA Ohio did not raise any concerns with out-of-booth painting during the PBR development, so no condition allowing for this was included in the PBR.

The federal 6H rule promulgated in 2008 requires spraying to be done within an enclosure with filtered exhaust. The intent of the 6H rule is to reduce particulate emissions of heavy metals, designated as Hazardous Air Pollutants, by requiring enclosures with filtered exhausts for spray operations. The 6H rule has nothing to do with reducing VOC emissions. It is true the 6H rule does exclude hand-held guns with a paint cup capacity of 3 ounces or less from the definition of "spray-applied coating operations" and thus

do not need to be used within an enclosure. Please be aware this means the capacity of the paint cup must be 3 ounces or less. It does not mean one can simply fill a regular pint or liter-size paint cup with only 3 ounces of paint and proceed to paint outside the booth. USEPA has extensive guidance about this issue.

However, all of that only matters if the shop is subject to the 6H rule in the first place. Shops can receive an exemption from 6H if they petition the USEPA and certify that all coatings used are HAP-free, i.e., no heavy metal pigments. If a shop is exempt from 6H, technically no booth is required per USEPA rules (although OSHA 1910 and NFPA 33 rules requiring enclosed booth ventilation and fire protection for painting operations would likely still apply.) In that case, Ohio EPA would still want shops to paint within enclosures to qualify and satisfy the original requirements of the PBR.

The proposed amendments to the auto body PBR include a new paragraph saying a shop must comply with the federal 6H rule if it applies. Please note the only way a shop can avoid the 6H rule is to get an exemption from USEPA. Spraying outside of a booth with a gun capacity of 3 ounces or less would still comply with 6H rule, but not the PBR as currently written. Therefore, we will revise the language in 3745-31-03(C)(2)(f)(i)(d) consistent with 6H rule.

In cases where two regulations apply concurrently, you must comply with both and the effect is typically more stringent than either intended. In this case, it would be the 6H provisions for spray operations that include the exemption for 3 oz. or less guns. However, if a shop is exempt from 6H rule, the PBR criteria take precedence.

Perhaps this could be resolved by simply amending the PBR criterion in (B)(2)(f)(i)(d) to exclude small guns with 3 oz. or less cup capacity, which is similar to the exemption already in 3745-21-18 for air brush application (although that exemption doesn't specify 3 oz. or less cup capacity). Then it wouldn't matter to a PBR shop if the 6H rule applies or not. DAPC would have to make the decision ultimately to amend the PBR criteria, so please let me know if ASA Ohio would support that and would like to make formal comments to that effect.

Follow-up Comment 5: I wanted to follow-up with you regarding the EPA's review of OAC Chapter 3745-31. As I previously explained, I represent the Automotive Service Association of Ohio (ASA Ohio). During the review of the proposed changes our members noticed a provision in 3745-31-03(C)(2)(f)(i)(d), which would require a facility claiming a PBR to "perform all painting operations in an enclosed spray booth which is designed to confine and direct the paint overspray, fumes, and vapors to a powered ventilation system and is equipped with either a dry filtration or water wash system to capture paint overspray."

We are under the impression that the federal 6H rule allows repair facilities to use 3oz or less of primer outside a booth. Shops under the PTIO use this 6H rule as the standard, which allows them to spray up to 3oz outside of a spray booth. Rule 3745-31, would therefore create a more stringent standard for those facilities claiming a PBR.

After speaking with Rick Carleski of the Ohio EPA we think this problem could be resolved if language was added, excluding guns with 3oz or less cup capacity. This would be similar to the exclusion granted in 3745-21-18. This exemption could be drafted a few ways; however, one example is:

(d) The facility performs all painting operations, excluding those done by spray guns with 3oz or less cup capacity, in an enclosed spray booth(s) booth which are is designed to confine and direct the paint overspray, fumes, and vapors to a powered ventilation system and are is equipped with either a dry filtration or water wash system(s) system to capture paint overspray.

On behalf of ASA Ohio I would like to thank you for your consideration of our suggestion. Please do not hesitate to contact me should you have any questions or concerns. [Andrew Huffman, Manager of Public Affairs, Governmental Policy Group, Inc., also represents the Automotive Service Association of Ohio (ASA Ohio)]

Follow-up Response 5: Thank you for your follow-up comment.

Ohio EPA concurs with your follow-up comment. Therefore, we have updated OAC rule 3745-31-03(C)(2)(f)(i)(d) consistent with 6H rule.

Comment 6: **The Utilities also seek clarification on the new permit-by-rule ("PBR") for paved and unpaved roadways and parking areas. Specifically, the Utilities have concerns regarding the impact on the energy delivery side that has little contact with Ohio EPA. The energy delivery side includes but is not limited to service centers, regional headquarters, line shops, and substations. Historically, these types of facilities may have only had air permits or registration for gas dispensing or emergency engines. Parking and roadway emissions were deemed de minimus. The lower threshold of 7,500 square feet appears very low. Thus, the Utilities seek the following clarification. If the emissions fall under the de minimus exemption and the parking and roadways are greater than 7,500 square feet, can the facility still be exempt as de minimus? Are existing sources grandfathered out of this PBR? Many parking and roadways are regulated under either an individual permit or a general permit. Is the PBR just an additional option to those options currently available? If so, is it necessary? Finally, would Ohio EPA consider revising the rule to increase the lower threshold value? [Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 6: Thank you for your comment.

If the emissions fall under the de minimus exemption and the parking and roadways are greater than 7,500 square feet, can the facility still be exempt as de minimus?

Yes, if the emissions fall under the de minimis rule i.e. they are under 10 lb/day, then the parking and roadways areas even greater than 7,500 square feet, are exempt.

To qualify for the PBR exemption listed under 3745-31-03(B)(1)(jjj), they have to meet all three criteria of being less than 5 tons of emissions per year, less than 3800 vehicles miles travelled (VMT), and less than 7500 square feet for

parking and roadways areas. If existing sources meet all three criteria described above, then they can apply for the PBR.

Are existing sources grandfathered out of this PBR?

No, in order to qualify for a permit-by-rule (PBR), the facility has to apply for each source to get a PBR.

Many parking and roadways are regulated under either an individual permit or a general permit. Is the PBR just an additional option to those options currently available? If so, is it necessary?

Yes, PBR is just an additional option in addition to individual permit-to-install (PTI) and general permits. For your information, we have added more general permits for paved and unpaved roadways and parking areas to expedite the permitting process.

Would Ohio EPA consider revising the rule to increase the lower threshold value?

No, Ohio EPA does not see a need to increase the lower threshold value which is 7500 square feet for paved and unpaved roadways and parking areas.

The PBR exemption covers both paved and unpaved roadways and parking areas, and the square feet are low because we had to base the calculations on unpaved only (so we could get a worst case). There are still establishments that contain unpaved roadways that would be less than 7500 square feet, which is why we decided to have a PBR for them initially.

Comment 7:

As part of the submittal of this rule to EPA for approval into the state implementation plan (SIP), the OEPA must, under Section 110(1) of the Clean Air Act (CAA), submit a demonstration showing that the permanent exemptions in OAC 3745-3 1-03(B)(1)(uu) to (iii) and the permits-by-rule (PBR) in OAC 3745-31-03(C)(2)(l) to (m) are protective of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, reasonable further

progress demonstrations and visibility , and are not in violation of Section 193 of the CAA, "General Savings Clause." [Genevieve Damico, Chief, Air Permits Section, US EPA Region V]

Response 7: Thank you for your comment.

As you may be aware, a PBR permit is in fact as effective and is comparable to a traditional permit. Both are expected to achieve equivalent environmental benefits. A PBR permit specifies applicable emission limitations and control requirements, operational restrictions, monitoring and recordkeeping requirements, reporting requirements and testing requirements in the body of the rule just as a an issued traditional permit does. Therefore, we don't see an issue with the OAC 3745-31-03(C)(2)(l) to (m) concerning backsliding.

Comment 8: **The PBR for paved and unpaved roadways and parking areas should prohibit the permittee from employing chemical dust suppressants in amounts that would create the risk of surface water or groundwater contamination. [Genevieve Damico, Chief, Air Permits Section, US EPA Region V]**

Response 8: Thank you for your comment.

Ohio EPA's Division of Surface Water rules require the same as follows:

"All chemical dust suppressants should be applied per the manufacturer's specifications and instructions. An entity should exercise caution when applying such suppressants in proximity to ditches, storm sewers and surface waters. In addition, applicators should be aware of weather conditions which would promote run-off such as pending precipitation events or frozen ground. Applicators are informed of the inherent liability with the use of chemical dust suppressants in the event the application leads to a violation of a water quality standard under Ohio Revised Code 6111. If such violation occurs, Ohio EPA Division of Surface Water will respond accordingly".

Therefore, no change is needed.

Comment 9: OAC 3745-31-03(C)(2)(m) for "Horizontal Well Completion Activities."

My client questions the need for this permit by rule, particularly given the traditional separation of regulatory oversight between drilling and completion operations, including flowback, which have been considered part of the "construction" of an air contaminant source regulated exclusively by the Ohio Department of Natural Resources, and "production," which can trigger air emissions that may be subject to Ohio EPA oversight and permitting requirements. If approved, this new Permit by Rule (PBR) will subject emissions of air pollutants resulting from horizontal well completion activities to air permitting requirements for the first time. This is an odd approach for regulating transitory sources that are already subject to stringent operational and emissions control requirements at the federal level. Given that the federal requirements will become even more stringent as of January 1, 2015, the PBR proposed by Ohio EPA is even more difficult to square with the current federal regulatory framework. Even a permit exemption of such activities would be a significant change of approach, because that implies an air permit would otherwise be required prior to engaging in that activity. Further, this implies that the failure to obtain a PBR for any horizontal well completion in the state could potentially subject that owner or operator to case-by-case air permitting, or alternatively to enforcement for failure to obtain an air permit. Most troubling, given this new approach by Ohio EPA, it is unclear what limiting principle is in play to continue treatment of other oil and gas well operations as part of construction.

Please consider the alternative approach of adding horizontal well completions to OAC 3745-31-33(E) as an allowable site preparation activity. This would bring such activities under the regulatory authority of the State, without the accompanying sea change to the current regulatory approach. Potential rule language could include notification of such activities to the State (or other requirements) as a prerequisite. For example,

language could be added at OAC 3745-31-33(E)(19) as follows:

Completion and flowback activities performed upon horizontal natural gas wells, so long as notification of commencement of such activities has been submitted to the director at least 48 hours in advance, in accordance with 40 CFR 60.5420(a)(2).

Best Available Technology (BAT) requirements aside, the PBR is a mirror of the federal rule (40 CFR Part 60, Subpart OOOO or Quad O) for all those wells that would already be subject. For horizontal wells not subject to Quad O, it is difficult to see the benefit of regulating sources which are currently exempted under the federal rule until such time as better information on emissions from such horizontal well completions is available. Currently, the overwhelming majority of horizontal wells being drilled and completed are targeting either the Point Pleasant/Utica or the Marcellus formations. For these wells, the Quad O operational and emissions control requirements are sufficient to minimize air emissions from these activities. This is clearly acknowledged by Ohio EPA, since no additional requirements over and above those of the federal rule were included in the PBR. As for the application of BAT under OAC 3745-31-05(A)(3), it is not clear that any well completion activity would meet the requirement in 3745-31-05(A)(3)(ii). Setting aside the issues with requiring an air permit for well completion activities, it is difficult to see how such activities could reach the 10 TPY threshold for any air pollutant. With the new requirements due to phase-in as of January 1, 2015 it is even more difficult to see how the emissions threshold triggering BAT applicability would be met.

Finally, we note that codifying the current Quad O requirements as a Permit By Rule opens the door to inconsistencies between state law requirements and federal law requirements every time US EPA revises the federal standard. As the comment in OAC 3745-31-03(C)(2)(m)(vii) "Miscellaneous information" notes, "The permit-by-rule in paragraph (C)(2)(m) of this rule was developed based on the final NSPS published in 40 CFR part 60, subpart OOOO as it appears in the July 1, 2014

Code of Federal regulations. Any amendments to 40 CFR part 60, subpart OOOO may cause this PBR to no longer conform with 40 CFR part 60, subpart OOOO." The approach proposed by my client would alleviate such conflicts when the federal standard is, inevitably, revised.

Further, you submitted a comment on the revised Business Impact Analysis response to question 4 on January 16, 2015 as follows:

My client believes the revised Business Impact Analysis response to question 4 is difficult to understand in light of the plain language of the New Source Performance Standard (NSPS) for Crude Oil and Natural Gas Production , Transmission, and Distribution (see 40 Code of Federal Regulations [CFR] Part 60, Subpart OOOO (40 CFR 60.5360 et seq].) The federal definition of a natural gas well affected facility covers those wells drilled principally for the production of natural gas. The regulated activity is gas well completion operations with hydraulic fracturing. While the draft permit by rule (as explained in the revised draft BIA) expands the universe of regulated wells based on a misunderstanding of the federal standard, it also limits applicability of the permit by rule (PBR) to only those wells meeting a particularized definition of horizontal wells. Both are contrary to the plain language of the federal standard as described herein.

The state has not made a compelling case for going beyond the federal standard based upon the proposed PBR and revised draft BIA response, demonstrating instead a misunderstanding of both the industry and applicable federal rule. In addition, the attempt to limit PBR applicability to, and retain Ohio's primacy for, a subset of federally regulated natural gas wells (those meeting the Ohio Department of Natural Resources definition of "horizontal well") is clearly subject to federal preemption and would likely be denied as part of a revision to the State Implementation Plan. Please consider alternatives to regulating natural gas well completion activities through the permitting process. One alternative is outlined in the attached comments,

which were provided on the larger rule revision package.

Specifically, the NSPS defines field gas as "feedstock gas entering the natural gas processing plant" and natural gas liquids are defined as "the hydrocarbons, such as ethane, propane, butane, and pentane that are extracted from field gas." Natural gas liquids are removed from field gas at natural gas processing plants and are not a separate regulated material under the NSPS. The change in the name and definition are a reflection of how that specific material or product is being extracted or processed. The definition of a natural gas processing plant provides clarity to how this regulation is intended to be interpreted: "[...] any processing site engaged in the extraction of natural gas liquids from field gas [...]." Any other interpretation or application of the rule would be contrary to a plain reading of the language.

Field gas is the gas produced at well sites and sold into gathering systems. It has been separated from entrained liquids, including condensable hydrocarbons and formation water, prior to entering the gathering system where it is transported, along with the field gas from other well sites, to a processing plant. Depending on the formation being produced, the field gas can range from nearly 100% methane (no or trace volatile organic compounds [VOCs]) to higher percentages of recoverable light VOCs like ethane, propane, and butane that are more challenging and not generally economic to recover at a natural gas well site. Regardless of the VOC content, all wells meeting the definition of a gas well affected facility, if completed using hydraulic fracturing, are subject to the applicable provisions of the NSPS. The operators know, prior to making a significant financial investment, the target formation and principal product of a well. The U.S. EPA understands this also. The perceived deficiency that the PBR is intended to cover, as described by the revised draft BIA, does not exist. [Kathy Milenkovski, STEPTOE & JOHNSON]

Chesapeake Energy Corporation (NYSE:CHK) is the second-largest producer of natural gas and the 11th

largest producer of oil and natural gas liquids in the U.S. Headquartered in Oklahoma City, the company's operations are focused on discovering and developing its large and geographically diverse resource base of unconventional natural gas and oil assets onshore in the U.S.

The company also owns substantial marketing and compression businesses. Further information is available at www.chk.com where Chesapeake routinely posts announcements, updates, events, investor information, presentations and news releases.

Chesapeake believes incorporating by reference the drilling and completing of horizontally drilled oil wells in the PBR is inappropriate and unwarranted as it goes well beyond the scope of the federal rule. 40 CFR NSPS subpart OOOO specifically states that only those wells principally drilled for the production of natural gas are subject to the rule. Horizontally drilled oil wells are, by definition, not principally drilled for the production of natural gas.

In addition, Chesapeake would like the OH EPA to defer to the US EPA clarification concerning the definition of hydraulically fractured gas wells subject to NSPS subpart OOOO. State definitions of oil and gas wells have historically been developed by departments other than Air Quality (i.e. Oil & Gas, Department of Natural Resources, etc.) to clarify and regulate royalty payments to leaseholders and do not fit when trying to shoehorn them into air regulations or permit requirements. Below is an excerpt from EPA's response to the proposed NSPS subpart OOOO, dated August 23, 2011, that discusses a petitioners request to use individual state definitions for gas wells.

- Comment: One commenter (4231) requests that the definition of gas well be modified to be each respective state's in-house definition of gas well. The commenter states that by doing this, the EPA would eliminate any confusion associated with having to apply different criteria (NSPS versus state regulations) for how to define a well-type in assessing the applicability of the rule.**

- **EPA Response:** *With respect to using each State's gas well definitions, the EPA believes this would cause undue confusion and may lead to inconsistencies in the affected source from state to state.*

Considering that hydraulically fractured oil wells are not currently applicable under 40 CFR NSPS subpart OOOO and that EPA never intended for state definitions to supersede the Federal definition of a gas well (those wells principally drilled for the production of natural gas), Chesapeake recommends OH EPA remove oil wells from applicability under the PBR for drilling and completions. [Jim Cooper, EH&S Regulatory Affairs Lead, Chesapeake Energy]

Response 9: Ohio EPA considered the comments provided by both commenters and determined to withdraw the proposed PBR, OAC 3745-31-03(C)(2)(m) for "Horizontal Well Completion Activities".

3745-31-05, "Criteria for decision by the director"

Comment 10: OAC 3745-31-05(A)(3)(iv) exempts sources subject to plantwide applicability limits from the requirement to employ Best Available Technology (BAT), and OAC 3745-31-05(A)(3)(f) and (g) state that BAT shall be equivalent to existing SIP limits for certain sources. As part of the submittal of this rule to EPA for approval into the SIP, the OEPA must, under Section 110(1) of the CAA, submit a demonstration showing that these provisions are protective of the NAAQS, PSD increments, reasonable further progress demonstrations and visibility, and are not in violation of Section 193 of the CAA, "General Savings Clause." [Genevieve Damico, Chief, Air Permits Section, US EPA Region V]

Response 10: Thank you for your comment.

PAL Backsliding Issue:

In order to obtain a PAL permit, permittees must apply for and obtain an installation permit. This process is equivalent

to processing a synthetic minor permit. Like any other synthetic minor permit, any increase in emissions is accounted for through the normal growth cushion in Ohio's SIPs. At the most, an increase in allowed emissions would be equivalent to the major modification significance levels because the PAL rules limit the increase to these levels. This is no different than any normal synthetic minor permit because synthetic minor permits are limited to the major modification significance levels.

When a PAL is established, a facility-wide emission limit is established. This facility-wide emission limit cannot be increased without obtaining a major NSR permit. When a company decides to install a new source or modify an existing source that is covered by the PAL, they can do so but they cannot increase facility emissions greater than the facility-wide PAL limit. This restriction is in place whether or not they employ BAT for the individual new or modified source. So, employing or not employing BAT does not have an impact on the allowed emissions from the facility. Since the allowed emissions from the facility will not change because BAT was not employed, the fact that BAT is not required does not result in backsliding.

Ohio EPA's PAL program and rules follow U.S. EPA's rules almost exactly. U.S. EPA did not decide to require BAT-like requirements to be implemented when changes occur under the PAL permit. This type of requirement was not and is not included in the U.S. EPA PAL rules. Since U.S. EPA did not require PAL facilities to employ BAT-like requirements when changes occur at the facility, it is difficult for Ohio EPA to believe that backsliding would occur in these situations. U.S. EPA would certainly have thought of the backsliding issue and would have put anti backsliding requirements in their rules if they thought this was an issue.

BAT shall be equivalent to existing SIP limits:

Paragraph (A)(3)(f) was added to incorporate volatile organic compounds (VOC) BAT requirements consistent with the VOC RACT requirements specified in OAC rule 3745-21-09, 3745-21-11 to 3745-21-16. Amending this rule is in response to Ohio EPA's obligation to legislation promulgated under Senate Bill 265.

Paragraph (A)(3)(g) was added to provide the Director the authority to establish BAT equivalent to the most stringent limit contained within the applicable rule regardless of the air contaminant source's location in counties where RACT does not apply.

Therefore, we don't see an issue with the paragraph (A)(3)(f) and (g) concerning backsliding issue.

OAC 3745-31-33, "Site Preparation Activities Prior to Obtaining a Final Permit PTI/PTIO"

Comment 11: This rule is not consistent with the CAA because it does not require the OEPA to review and approve proposed construction or modification prior to construction activities. Under the rule as drafted, the OEPA, the public, and EPA would not have the opportunity to review and determine whether the project will be in compliance with the CAA before construction starts, including a determination of whether the proposed construction will interfere with attainment or maintenance of the NAAQS or will violate a control strategy. EPA would not consider the rule, as written, approvable for the following reasons:

- 1. OAC 3745-31-33 is not consistent with 40 C.F.R. 51.160(a), which requires a permitting authority to implement procedures to determine whether a project will interfere with the attainment or maintenance of the NAAQS. The lack of administrative approval procedures in OAC 3745-31-33 for preconstruction activities prior to construction violates this provision.**
- 2. OAC 3745-31-33 is not consistent with 40 C.F.R. 51.160(b) and Section 110(a)(2)(c) of the CAA, which require a permitting authority to implement procedures that can prevent construction or a modification of a project if it will interfere with the attainment or maintenance of the NAAQS. The lack of administrative approval procedures in OAC 3745-31-33 for preconstruction activities prior to construction violates this provision.**

- 3. OAC 3745-31-33 contains a "Director's Discretion" provision that allows the OEPA's Director to unilaterally determine that activity not listed in its rule can be undertaken prior to permit issuance (as an allowed preconstruction activity). The Director's Discretion provision is not allowable under the CAA because it would in effect delegate SIP-approval to a State.**
- 4. In accordance with 40 C.F.R. 51.166(b), the OEPA must provide a demonstration that its definitions are at least as consist as the definitions in 51.166(b).**
- 5. Section 110(i) of the CAA provides that a permitting authority cannot change its SIP unless it meets 110(l) of the CAA. Relaxations to a State's SIP require a 110(l) demonstration showing "that the national ambient air quality standards, PSD increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented" (40 C.F.R. 51 App. V 2.2(d)). The current Ohio SIP requires that sources obtain a permit prior to construction, and, in order to be approved, the revision to this requirement must be shown to be protective of the requirements of the CAA. The OEPA must provide such a 110(l) analysis with its request for a SIP revision. [Genevieve Damico, Chief, Air Permits Section, US EPA Region V]**

Response 11: Thank you for your comment.

Based on our discussions with U.S. EPA Region 5 staff, Ohio EPA will withdraw the change to paragraph (E)(14) of OAC rule 3745-31-33 from this package and then resubmit it at a later date. Ohio EPA will only proceed with minor, administrative changes to the rule.