



Division of Air Pollution Response to Comments

Rule: SERC Agency Rules, OAC Ch. 3750 5yr Review

Agency Contact for this Package

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On behalf of the director of emergency response, Ohio EPA held a 30-day public hearing ending April 20, 2020 regarding draft rules in Ohio Administrative Code (OAC) Chapter 3750, rules for the State Emergency Response Commission (SERC). This document summarizes the comments and questions received during the official 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.

General/Overall Concerns

Comment 1: The commenter supports reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio citizens. Commenter did submit similar comments to OAC 3750-1-01 on September 6, 2017 and agency responded that their comments would be addressed as part of the program's broader 5-year rule review process. Commenter submitted comments dated April 10, 2020 to proposed amendments to OAC 3750-1-01, "Definitions and incorporation by reference." Specifically, commenter suggested referencing the most recent Code of Federal Regulations, as opposed to maintaining a list of the Federal Registers that have been updated over the years for most if not all the citations. Doing this would simplify the interpretation necessary for the regulated community and streamline the process of understanding the materials being incorporated. **(Christina B. Zeigler, American Petroleum Institute)**

Response 1: The comments have sound reasoning and basis. The Agency agrees with comments and shall incorporate such into OAC 3750-1-01 "Definitions and incorporation by reference" citations. Ohio EPA will

ensure consistency with our rule writing guidance from the Legislative Services Commission (LSC).

Comment 2: API Ohio notes that the terms defined in paragraphs §§ 3750-1-01(OO) through (XX) are not in alphabetical order when compared with the other defined terms preceding those paragraphs. To assist users of these rules, API Ohio would ask that Ohio EPA consider alphabetizing all the defined terms from §§ 3750-1-01(A) through (XX). However, API also recognizes that this task would require corresponding revisions to any associated citations throughout the remainder of the Ohio Admin. Code 3750 rules, and the potential challenges associated with the same. **(Christina B. Zeigler, American Petroleum Institute)**

Response 2: The agency thanks you for the comment, but the task at this point in the process is time sensitive and the agency shall incorporate such during the next 5-year rule review.

Comment 3: Additionally, pursuant to Ohio Admin. Code § 3750-1-01(L) – for clarity of understanding, it appears that the word “Act” should be added to the defined term, as shown below

“(L) “Emergency Planning and Community Right-To-Know Act” (EPCRA) means Emergency Planning and Community Right-To-Know Act of 1986 contained in 42 USC 11001 to 11050 and regulations adopted thereunder.”

(Christina B. Zeigler, American Petroleum Institute):

Response 3: The Agency agrees with comment and shall make such change as noted by commenter.

Comment 4: In Ohio Admin. Code § 3750-1-01(PP), the definition of “Navigable Waters” should be revised to be consistent with the recent United States Environmental Protection Agency’s (“US EPA”) Final Rule on the definitions of “Navigable Waters” and “Waters of the United States” at 40 C.F.R. § 120.2 (“WOTUS Rule”). The WOTUS Rule was published as a Final Rule in the April 21, 2020 Federal Register and becomes effective on June 22, 2020.

API Ohio recommends the following revision to the definition of “Navigable Waters” in paragraph (PP) to reference the updated WOTUS Rule

(Christina B. Zeigler, American Petroleum Institute).

Response 4: The Agency thanks you for your comment recommending that the SERC eliminate the definition of Navigable Waters and reference the federal definition of Navigable Waters. The definition for Navigable Waters is used by the SERC in the spill reporting program, and the SERC has not identified any required changes to the spill reporting requirements as part of this review. Spills into Navigable Waters, as defined in Ohio Admin. Code (OAC) section 3750-1-01(PP) are reportable if there is a visible sheen. Changing the definition would change the scope of those reportable spills.

Referencing the federal definition or the definition in Ohio Revised Code (ORC) Section 6111 (as the Clean Water Act is implemented in Ohio) would change the scope of the spill reporting requirements. Further confusion for the SERC regulated community could occur anytime US EPA or Ohio EPA modifies their rules and regulations. At this time the SERC is not updating the definition to cross-reference the federal definition of “Waters of the United State” because the State of Ohio regulates “Waters of the State” under ORC Section 6111 and referencing U.S. EPA’s definitions instead of maintaining an Ohio specific definition of Navigable Waters could lead to regulatory inconsistencies. The SERC will keep the definition of Navigable Waters under OAC section 3750-1-01(PP).

Comment 5: In Ohio Admin. Code § 3750-1-01(SS), the definition of “Crude Oil,” “Crude,” or “Petroleum,” the draft revisions show the words “out of” being deleted near the end of the definition, but to read grammatically correct, API Ohio suggests that those words should be retained, as shown below

“(SS) “Crude Oil,” “Crude,” or “Petroleum” means liquid petroleum as the petroleum comes out of the ground, as distinguished from refined oils manufactured out of the petroleum.”

(Christina B. Zeigler, American Petroleum Institute)

Response 5: The Agency agrees with comment and shall make such change as note by commenter.

Comment 6: Additionally, for consistency with the comment above regarding Ohio Admin. Code § 3750-1-01(PP), recommending an update to the definition of Navigable Waters to reflect the latest WOTUS Rule, similarly in Ohio Admin. Code § 3750-1-01(Y Y)(2)(l) to (m) in the

“Incorporated Materials” subparagraph (2) of paragraph (YY), a new reference to 40 C.F.R. § 120 addressing the Definition of Waters of the United States should be inserted after subparagraph (2)(l), as a new subparagraph (2)(m), and the current paragraphs (m) to (xx) should then be re-lettered as (n) to (yy).

The new subparagraph (2)(m) should read as follows:
(m) 40 CFR 120; “Definition of ‘Waters of the United States;’”
85 FR 22340, Apr. 21, 2020.

(Christina B. Zeigler, American Petroleum Institute)

Response 6:

The Agency thanks you for your comment recommending that the SERC eliminate the definition of Navigable Waters and reference the federal definition of Navigable Waters. The definition for Navigable Waters is used by the SERC in the spill reporting program, and the SERC has not identified any required changes to the spill reporting requirements as part of this review. Spills into Navigable Waters, as defined in Ohio Admin. Code (OAC) section 3750-1-01(PP) are reportable if there is a visible sheen. Changing the definition would change the scope of those reportable spills.

Referencing the federal definition or the definition in Ohio Revised Code (ORC) Section 6111 (as the Clean Water Act is implemented in Ohio) would change the scope of the spill reporting requirements. Further confusion for the SERC regulated community could occur anytime US EPA or Ohio EPA modifies their rules and regulations. At this time the SERC is not updating the definition to cross-reference the federal definition of “Waters of the United State” because the State of Ohio regulates “Waters of the State” under ORC Section 6111 and referencing U.S. EPA’s definitions instead of maintaining an Ohio specific definition of Navigable Waters could lead to regulatory inconsistencies. The SERC will keep the definition of Navigable Waters under OAC section 3750-1-01(PP).

Comment 7:

Ohio Admin. Code 3750-10-01 addresses the establishment of a State Emergency Response Commission, Executive Committee, and other relevant committees. In Ohio Admin. Code § 3750-10-01(A)(1), in the first sentence of this paragraph, the draft revision that currently reads “as did the succeeding term ~~that it succeeds~~” appears to be incorrect. Given that it is intended to refer to the preceding term (as in the current language “the term that it succeeds”), it would appear that the proposed new wording “succeeding term” should be changed to “preceding term” as shown below:

“(1) The initial appointments made by the governor to the commission shall provide five members with a term of two years and five members with a term of one year; thereafter terms of office of the appointed members of the commission shall each be for two years with each term ending on the same day of the same month as did the ~~succeeding~~ preceding term.”

(Christina B. Zeigler, American Petroleum Institute)

Response 7: The Agency agrees with comment and shall make such change as noted by commenter.

Comment 8: In the “Comment” found at the end of § 3750-20-70, the Date inserted for the “Ohio Hazardous Materials Exercise Evaluation Manual” is “December 2016,” but the link provided at https://epa.ohio.gov/portals/27/serc/SERC_2016%20OHM-EEM.pdf connects to a version of the document labeled as “Revision: February, 2017.” API Ohio recommends that revision date should also be referenced in the proposed regulatory revision, as shown below:

[Comment: "Ohio Hazardous Materials Exercise Evaluation Manual" (December 2016; Revised February, 2017) (OHM-EEM): copies can be obtained by contacting the "State Emergency Response Commission (SERC), 50 W. Town Street, PO Box 1049, Columbus, Ohio 43216-1049." The document is also available electronically at: https://epa.ohio.gov/portals/27/serc/SERC_2016%20OHM-EEM.pdf].

(Christina B. Zeigler, American Petroleum Institute)

Response 8: The Agency agrees with comment and shall make such change as noted by commenter.

Comment 9: In Ohio Admin. Code § 3750-30-15(B)(1), rather than deleting the parenthetical that reads “(hereinafter ‘MSDS’)” as shown in the Draft revisions, API Ohio recommends that the parenthetical should be retained and revised to read “(hereinafter ‘SDS’)” since the acronym “SDS” is used to refer to safety data sheet throughout the remainder of the rule. The recommended revision is shown below:

“(1) A listing of the hazardous chemicals for which a safety data sheet (hereinafter “SDS”) is required, grouped by hazard

categories as defined in rule 3750-30-25 of the Administrative Code;”

(Christina B. Zeigler, American Petroleum Institute)

Response 9: The Agency agrees with comment and shall make such change as noted by commenter.

Comment 10: Likewise, in Ohio Admin. Code § 3750-30-27(A), the reference to “MSDS” should be changed to “SDS,” so as to be consistent with similar changes being made throughout these rules.

(Christina B. Zeigler, American Petroleum Institute)

Response 10: The Agency agrees with comment and shall make such change as noted by commenter.

End of Response to Comments