

Hearing Summary

Rule Package: OAC Ch 3745-112, 5-Year Review

Original filing date: April 5, 2022

Public comment start date: April 5, 2022

Public comment end date: May 6, 2022

Public hearing date: May 6, 2022

List of Rules: OAC Ch 3745-112-(01 to 08)

Were there any participants in this public hearing beyond Ohio EPA staff or JCARR staff?

☒ Yes

☐ No

Were there comments received during the public comment period outside of those presented at this hearing?

☒ Yes

☐ No

This hearing summary has been compiled to meet the requirements of Section 119.03 of the Revised Code.

This hearing summary includes this cover sheet and the following attachments:

1. **Attachment A** - A copy of the public notice for this hearing.
2. **Attachment B** - A copy of the sign-in sheet for this hearing.
3. **Attachment C** - A copy of the script read into the record to begin and end the hearing.
4. **Attachment D** - A copy of the response to comments.

Ohio EPA's response to comments document includes the comments received, who commented, the agency response to comments, and a statement of whether or not the rule was changed due to the comments.

Ohio EPA digitally records all public hearings for rules. The digital recordings are available upon request in a WAVE (.wav) file format. These recordings may be sent out for transcription if necessary.

Public Hearing Notice
Ohio Environmental Protection Agency
Ohio Administrative Code (OAC) Chapter 3745-112, "Consumer Products"
Updates and Five-Year Rule Review

Notice is hereby given that the Ohio Environmental Protection Agency, Division of Air Pollution Control (DAPC) is planning to amend rules in Ohio Administrative Code (OAC) Chapter 3745-112 to adopt a more recent version of the Ozone Transport Commission (OTC) model rule for consumer products. DAPC has also completed a review of the rules in this chapter to fulfill the requirements of Ohio Revised Code (ORC) Section 106.03 and 106.031 (5-year review).

The rules in OAC Chapter 3745-112 contain regulations for the content of volatile organic compounds (VOCs) in consumer products sold, supplied, offered for sale, or manufactured for use in the state of Ohio. These rules were initially promulgated in 2007 as part of Ohio's strategy to attain the 1997 ozone National Ambient Air Quality Standard (NAAQS) by adopting the standards in the model rule developed by the OTC. The OTC develops model rules for states to consider when adopting consumer products regulations and has since provided updated versions of the model rules, called "phases", for states to consider in subsequent adoption or revision of Consumer Products standards.

The rules in OAC Chapter 3745-112 are currently based on the 2006 Phase II OTC model rule for Consumer Products. Ohio EPA is updating these rules to adopt more recent versions of the OTC model rule; specifically, up through the 2012 Phase IV OTC model rule (this includes adopting the limits in the 2010 Phase III model rule, as well as the 2013 technical update). This update is part of Ohio's strategy to attain the 2015 ozone NAAQS.

Please see the rule synopsis, available electronically at the web address below, for a complete summary of the proposed rule amendments.

Pursuant to Section 121.39 of the Ohio Revised Code, DAPC was required to consult with interested parties affected by the rules before the Division formally adopts them. On December 22, 2021, these rules went out for a 30-day review by interested parties. Please see the rule synopsis, available electronically at the web address below, for a complete summary of the proposed rule amendments.

Pursuant to Part D of Title I of the CAA, Ohio EPA is required to establish a SIP for the attainment and maintenance of the NAAQS. The above-mentioned rules are a part of Ohio's SIP for attainment and maintenance of the 2015 ozone NAAQS and the proposed amendments will be submitted to United States Environmental Protection Agency (U.S. EPA) as a modification of the SIP.

Ohio EPA will hold a virtual public hearing on the rules on **Friday, May 6, 2022, at 10:30 AM**. To attend the virtual hearing, please register at: <https://attendee.gotowebinar.com/register/789271650030108427>. During the hearing, the public may submit written comments on the record about the proposed rules. Written comments may also be submitted electronically any time before the close of business on May 6, 2022 to DAPC-Comments@epa.ohio.gov.

To facilitate the scheduling of oral presentations, persons intending to give testimony in-person at the hearing should notify Cathryn Allen at the Ohio EPA Public Interest Center, cathryn.allen@epa.ohio.gov or (614) 644-2160.

All interested persons are entitled to attend or be represented at the hearing and give written or oral comments on these rule changes and SIP revisions. All oral comments presented at the hearing, and all written statements submitted at the hearing or by the close of business on May 6, 2022 will be considered by Ohio EPA prior to final action on this rule and SIP revisions. Written statements submitted after May 6, 2022 may be considered as time and circumstances permit but will not be part of the official record of the hearing.

These rules and associated documents are available on DAPC's Web page for electronic downloading at <https://epa.ohio.gov/divisions-and-offices/air-pollution-control/regulations/proposed-rules>.

Questions regarding accessing the web site and any other questions or comments about these rules should be directed to Paul Braun at Ohio EPA, (614) 644-3734, DAPC-Comments@epa.ohio.gov, or mailed to Paul Braun, Ohio EPA, Division Air Pollution Control, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. Persons submitting comments electronically are encouraged to follow-up with a hard copy via regular mail.

Public Hearing: Consumer Products Proposed Rules Division of

Attendee Report: Air Pollution (Statewide)

Report Generated:

05/06/2022 01:19 PM EDT

| Webinar ID | Actual Start Date/Time | Duration | # Registered | # Attended |
|-------------|-------------------------|------------|--------------|------------|
| 534-273-259 | 05/06/2022 10:26 AM EDT | 45 minutes | 13 | 11 |

Attendee Details

| Attended | Interest Rating | Last Name | First Name | Registration Date/Time | Organization |
|----------|-----------------|-------------|------------|-------------------------|---|
| Yes | 97 | Boeckermann | Kayla | 05/05/2022 03:45 PM EDT | Superior Industrial Solutions, Inc. |
| Yes | 90 | Bolling | Irene | 04/12/2022 03:08 PM EDT | Zep Inc |
| Yes | 97 | Brickman | Dianne | 04/11/2022 05:44 PM EDT | |
| Yes | 100 | Brown | Carrie | 04/06/2022 11:31 AM EDT | HCPA |
| Yes | 93 | Cobb | Kellee | 05/05/2022 03:39 PM EDT | |
| Yes | 96 | Eck | Jennifer | 04/27/2022 01:57 PM EDT | |
| Yes | 99 | Georges | Nicholas | 04/05/2022 07:09 PM EDT | Household & Commercial Products Association |
| Yes | 98 | Kneisel | Brittney | 05/05/2022 08:37 AM EDT | JCARR |
| Yes | 96 | Murphy | Ryan | 04/29/2022 08:08 AM EDT | Diversey |
| Yes | 99 | Raymond | Doug | 04/29/2022 11:48 AM EDT | National Aerosol Association |
| Yes | 96 | Toolaabee | Neema | 04/20/2022 11:16 AM EDT | DAP Global Inc. |

DAPC Consumer Products Proposed Rules

May 6, 2022

Hello and welcome to Ohio EPA's public hearing regarding Division of Air Pollution Control's proposed rules. My name is Mary McCarron and I'm hosting today's public hearing. With me today from Ohio EPA's Division of Air Pollution Controls is Paul Braun and rules coordinator Mandi Payton. In a moment, we will move to the public hearing where we will take official comments on the proposed rule.

For those attending, you may submit any comments you have about the proposed rules in the Questions pane at any time.

We will not be responding to any comments submitted during the public hearing today. I will read aloud any comments we receive in the GoTo platform.

Before we get started, I'd like to go over a few items to help our attendees navigate the GoTo platform.

On this slide here you will see an example screenshot of your Attendee interface. You should see something that looks like this on your computer desktop on the right-hand side of your screen. For this public meeting you are listening in using your computer audio. If you are having sound issues or if the slides stop advancing, try refreshing your browser. If that doesn't work, try logging off and logging back in.

Please submit public comments by clicking on the question mark icon and typing them into the Questions pane on your attendee interface. You may send your comments in at any time. All comments submitted will be read aloud for the whole audience to hear.

You can also click on the document icon to view included handouts.

We will now begin the hearing.

PUBLIC HEARING SPEECH

Thank you for taking time to attend this hearing before Ohio EPA. The purpose of the hearing today is to obtain comments from any interested person regarding Ohio EPA's proposed rules.

The Division of Air Pollution Control is planning to amend rules in Ohio Administrative Code Chapter 3745-112 to adopt a more recent version of the Ozone Transport Commission (OTC) model rule for consumer products. DAPC has also completed a review of the rules in this chapter to fulfill the requirements of Ohio Revised Code (ORC) Section 106.03 and 106.031 (5-year review).

The rules in OAC Chapter 3745-112 contain regulations for the content of volatile organic compounds in consumer products sold, supplied, offered for sale, or manufactured for use in the state of Ohio. These rules were initially promulgated in 2007 as part of Ohio's strategy to attain the 1997 ozone National Ambient Air Quality Standard (NAAQS) by adopting the standards in the model rule developed by the OTC. The OTC develops model rules for states to consider when adopting consumer products regulations and has since provided updated versions of the model rules, called "phases", for states to consider in subsequent adoption or revision of Consumer Products standards.

The rules in OAC Chapter 3745-112 are currently based on the 2006 Phase II OTC model rule for Consumer Products. Ohio EPA is updating these rules to adopt more recent versions of the OTC model rule; specifically, up through the 2012 Phase IV OTC model rule (this includes adopting the limits in the 2010 Phase III model rule, as well as the 2013 technical update). This update is part of Ohio's strategy to attain the 2015 ozone NAAQS.

These rules have been filed with the Joint Committee on Agency Rule Review. Copies of the rules are available for public review on our website and in the handouts section in GoTo.

All interested persons are entitled to attend or be represented, and to present written comments concerning the proposed rules. All written comments received as part of the official record will be considered by the director of Ohio EPA.

To be included in the official record, written comments must be received by Ohio EPA by the close of business, today, May 6, 2022. These comments may be typed into the chat today or emailed to DAPC-Comments@epa.ohio.gov. All emailed comments submitted for the record receive the same consideration as typed testimony given today.

Written statements submitted after today may be considered as time and circumstances permit but will not be part of the official record of the hearing.

This hearing affords citizens an opportunity to provide input. Therefore, we will not be able to answer questions today.

YOU MAY NOW SUBMIT COMMENTS IN WRITING. I will read aloud any comments we receive in the hearing chat. I will keep the chat open until 11:00 a.m. to provide time for participants to type in comments.

CLOSING

After the hearing closes, we will accept written comments through 5:00 p.m. today. You can send those comments to the email address on the screen.

Thank you for your comments, cooperation, and participation in Ohio EPA's decision-making process. The time is now _____ and this hearing is concluded.



Division of Air Pollution Control Response to Comments

Rule: OAC Chapter 3745-112, "Consumer Products"

Agency Contact for this Package

Division Contact: Roman Zoss, DAPC, (614) 644-3622, Roman.Zoss@epa.ohio.gov

Ohio EPA held a public hearing on May 6, 2022 and a 30-day comment period ending May 6, 2022 regarding proposed amendments to Ohio Administrative Code (OAC) Chapter 3745-112, "Consumer Products". This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on May 6, 2022.

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: Willert Home Products, Inc. ("Willert") timely submits the following comments in support of the Ohio Environmental Protection Agency ("Ohio EPA"), Division of Air Pollution Control ("DAPC") proposed rule amendments in Ohio Administrative Code (OAC) Chapter 3745-112, "Consumer Products Rule," currently under review by the Joint Committee on Agency Rule Review ("JCARR"). Specifically, Willert supports Ohio EPA's decision to retain Ohio's exemption from VOC limits for the "Toilet/Urinal Care Products" category under OAC 3745-112-03 Table 1 and from the definition of "Air freshener" under OAC 3745-112-01(7).

Willert makes certain consumer products, including toilet/urinal care products that it distributes in the State of Ohio and across the country, potentially regulated by Ohio's Consumer Products rule. Willert and others commented on Ohio's 2007 Consumer Products rule that certain products within the "Toilet/Urinal Care Products" category would be banned from sale in Ohio by the proposed 3% VOC limit. Ohio EPA appropriately re-evaluated this issue and decided not to regulate this product category at that time because "its reactivity is relatively low and it appears that current viable substitutes lack the performance aesthetics" of the products that would be banned by the 3% VOC limit. OAC Chapter 112 Response to Comments

(February 9, 2007). For the 2022 version of the Consumer Products rule, Ohio EPA sought comment on whether these reasons for the exclusion of Toilet/Urinal Care Products are still valid today.

Willert and others provided comments to Ohio EPA on the draft 2022 rule that verified the justification for excluding this category remains today. Based on these comments, DAPC properly “indicate[d] the justification for excluding this category remains appropriate and as such, the draft rule has been revised to remove the toilet/urinal category.” OAC Chapter 3745-112 “Consumer Products” Response to Comments (April 2022). This decision is consistent with Ohio EPA’s previous rulemaking and the state of the science for this category of products.

Specifically, Willert distributes a product that releases a deodorant compound for toilets and urinals very slowly over time. This slow release characteristic that is essential to its long-lasting benefit for customers is due to its low reactivity, which the California Air Resources Board (CARB) found in 2004 did not contribute significantly to VOC emissions or the formation of ozone. See CARB, Initial Statement of Reasons, IX-213 (May 7, 2004). Ohio EPA may continue to exempt these products from its Consumer Products VOC rule without negative effect on its goal of reducing ozone formation.

Willert can also confirm that substitute products with <3% VOC content continue to lack the performance aesthetics of the products in this category that would be banned if applying the OTC model rule to this category. Moreover, the substitute products contain pine oil or other air fresheners that are far more reactive. In fact, a small percentage of highly reactive VOC could contribute more to ozone formation than 98% of the very low reactive VOC contained in Willert’s products. Additional information about these products was provided to Ohio EPA in Willert’s comments on the draft Consumer Products rule and are incorporated here by reference.

DAPC’s decision to exclude toilet/urinal care products from regulation under OAC Chapter 3745-112 also resolves an administrative issue. DAPC’s Business Impact Assessment (“BIA”) did not consider the negative economic effect of regulating these products for the first time, and effectively banning a product sold by Ohio businesses and relied upon by customers for long-lasting odor control benefits. Ohio EPA’s decision to exclude the Toilet/Urinal Care product category means that the BIA “does not need to be revised to account for costs related to this category.” OAC Chapter 3745-112 “Consumer Products” Response to Comments (April 2022). Any decision to regulate these products would necessitate revisiting the BIA for this rule.

For the reasons set forth above and in its previous comment to the original Revision, Willert commends DAPC for its decision to continue excluding the

Toilet/Urinal Care products category from Ohio's Consumer Products VOC rule at OAC Chapter 3745-112. **(Kelly Webster, Willert Home Products)**

Response 1: Ohio EPA thanks Willert Home Products for their comment. The agency has taken it into consideration and will continue to exclude the Toilet/Urinal Care products category from Ohio's Consumer Products VOC rules.

Comment 2: The Household & Commercial Products Association (HCPA) appreciates the opportunity to offer comments to the Ohio Environmental Protection Agency (Ohio EPA), Division of Air Pollution Control (DAPC) on the proposal to update the rules in the Ohio Administrative Code (OAC) Chapter 3745-112. This proposal is part of DAPC's comprehensive plan to achieve compliance with the national ambient air quality standard for ground-level ozone.

HCPA supports the long-standing commitment by DAPC to adopt regulatory provisions that are consistent with other states that have adopted more stringent volatile organic compound (VOC) limits for consumer products than the U.S. Environmental Protection Agency's (U.S. EPA) National Volatile Organic Compound Emission Standards for Consumer and Commercial Products. The proposal is based on the Ozone Transport Commission (OTC) 2012 Model Rule for Consumer Products (hereinafter referred to as "Phase IV OTC Model Rule"), updating from the OTC 2006 Model Rule for Consumer Products (hereinafter referred to as "Phase II OTC Model Rule"), and includes the 2013 technical update as well.

HCPA member companies manufacture and market more than two-thirds of the broad product categories governed by both DAPC's current regulation and the proposed amendments. HCPA has participated in the development of this proposal by offering comments to DAPC during the early stakeholder outreach and on the draft revisions. Most of the comments that HCPA provided were intended to identify revisions that will enhance consistency with the OTC Model Rule and the final consumer products regulations promulgated by Colorado, Connecticut, Delaware, Maryland, New Hampshire, New York, Rhode Island, and Utah. HCPA would like to thank DAPC for making these revisions. By developing consistent regulations, states can achieve improvements in air quality without imposing impediments to interstate commerce.

HCPA would also like to thank DAPC for modifying the effective date of the proposed amendments. While there are HCPA member companies that manufacture and market products on a nationwide basis and thus, these products already comply with the comparable VOC limits mandated by the current California regulation, there are other HCPA member companies that manufacture and/or distribute products on a regional basis and need a reasonable amount of time:

- Reformulate products to comply with the new VOC limits, conduct stability testing, efficacy testing and make the necessary changes to products labels and other documents such as Safety Data Sheets (SDSs) and Technical Data Sheet (TDSs); and/or,
- Make necessary changes in product distribution channels to ensure compliant products are supplied to retailers and distributors.

Reformulating products and changing distribution systems is an expensive process. Moreover, there are instances in which proposed federal and state regulations (impacting other issues not related to VOC regulations) have been withdrawn, postponed and altered unexpectedly – sometimes at the last minute. Consequently, companies do not expend time and money to reformulate products or to restructure distribution networks to comply with new regulations until these requirements have binding legal effect.

As HCPA requested a compliance date of one year after the date of publication of the final regulation to ensure sufficient time, HCPA can support an effective date of July 1, 2023, *provided* that the date of publication of the final regulation is on or before July 1, 2022. If the date of publication of the final regulation occurs after July 1, 2022, HCPA requests that the compliance date be delayed such that the new compliance date occurs one year after the publication of the final regulation so that companies have sufficient time to ensure compliant product is sold in the state of Ohio.

HCPA appreciates the opportunity to participate as an active stakeholder in DAPC's open and transparent public process to provide feedback on the proposed amendments to OAC Chapter 3745-112. HCPA is on record in Ohio and 16 other states (and the District of Columbia) as supporting regulations that are consistent with the OTC Model Rule.

If you have any questions about issues presented in these comments, please contact me at ngeorges@thehcpa.org. (**Nicholas B. Georges, Senior Vice President Scientific and International Affairs, Household & commercial Products Association**)

National Aerosol Association Supports the HCPA comments and reiterates the concern of the effective date. (**Doug Raymond, National Aerosol Association**)

Response 2:

Ohio EPA thanks Household & Commercial Products Association and the National Aerosol Association for their comments. Ohio EPA understands the concerns regarding implementation of the rules. As the agency has set the compliance date to July 1, 2023 (OAC 3745-112-03) and anticipates the

final rule will be effective prior to July 1, 2022. This will give affected manufactures at least one year to comply.

End of Response to Comments