

Hearing Summary

Rule Package: SERC Various Rules, 5-yr Review

Original filing date: August 1, 2017

Public comment start date: August 1, 2017

Public comment end date: September 6, 2017

Public hearing date: September 6, 2017, 10:30 AM at OEPA Central Office, Columbus, Ohio

List of Rules: 3750-1-01; 3750-1-02; 3750-15-05; 3750-25-01; 3750-25-05; 3750-25-10;
3750-25-15; 3750-30-01; 3750-30-20; 3750-50-03; 3750-50-05;
3750-50-10 and 3750-50-20

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
Ohio Environmental Protection Agency
Five-Year Rule Review of Ohio Administrative Code (OAC) rules:
3750-1-01; 3750-1-02; 3750-15-05; 3750-25-01; 3750-25-05; 3750-25-10; 3750-25-15;
3750-30-01; 3750-30-20; 3750-50-03; 3750-50-05; 3750-50-10 and 3750-50-20

Notice is hereby given that the Ohio Environmental Protection Agency, Division of Air Pollution Control (DAPC) on behalf of the State Emergency response Commission (SERC) has performed a review of the above referenced rules primarily to satisfy the requirements of Section 106.03 of the Ohio Revised Code (ORC) (five-year review).

The DAPC finds the following rules to be necessary and with need for changes. The DAPC proposes to amend OAC 3750-1-01, "Definitions and Incorporation by Reference" to update Code of Federal Regulations (CFR) reference standard dates, OAC 3750-30-01, "Facilities Subject to hazardous Chemical Reporting Requirements" to align the reporting for oil and gas facilities regulated under ORC 1509 to report to the electronic database created and hosted by ODNR that shall satisfy reporting under ORC 3750, and OAC 3750-30-20, "Facility Emergency and Hazardous Chemical Inventory Form" to incorporate federal OSHA changes to hazard categories from five to two.

The following are being amended to fix typo errors and update rules to match agency and Legislative Services Commission (LSC) format standards: OAC 3750-15-05 "Public Notice of Proposed Rules", OAC 3750-25-01 "Facilities Subject to Emergency Release Notification Requirements", 3750-25-05 "Designation of Hazardous Substances", OAC 3750-25-10 "Determination of Reportable Quantities for Hazardous Substances", OAC 3750-25-15 "Calculations for Reportable Quantities for Continuous Releases", OAC 3750-50-03 "Emergency Planning and Community Right-to-Know Fund", OAC 3750-50-10 "Grant Application for Emergency Planning and Community Right-to-Know Funds" and OAC 3750-50-20 "Emergency Planning and Community Right-to-Know Reserve Fund".

The DAPC has found the following rules to be necessary but without need for changes: OAC 3750-1-02 "Purpose" and OAC 3750-50-05 "Special Emergency Planning Fund".

Pursuant to ORC Section 121.39, DAPC was required to consult with interested parties affected by the rules before the Division formally adopts them. On these rules went out for a 30-day review by interested parties. No comments were received.

Pursuant to Section 119.03 of the Ohio Revised Code, a public hearing on these rule changes will be conducted on **September 6, 2017 at 10:30 AM** at Ohio EPA, Lazarus Government Center, 50 W. Town Street, Suite 700, Columbus, Ohio. All visitors to Ohio EPA must register at the Security desk in the lobby upon arrival. Please bring photo identification (such as a valid driver's license). For security reasons, visitors are required to wear their badge at all times while in the building. Please arrive early to complete these procedures.

All interested persons are entitled to attend or be represented at the hearing and give written or oral comments on these rule changes. All oral comments presented at the hearing, and all written statements submitted at the hearing or by the close of business on September 6, 2017, will be considered by Ohio EPA prior to final action on this rule. Written statements

submitted after September 6, 2017, may be considered as time and circumstances permit, but will not be part of the official record of the hearing.

These rules are available on DAPC's Web page for electronic downloading. The URL is: <http://epa.ohio.gov/dapc/DAPCrules.aspx> and see the information under the "proposed rules" tab. Questions regarding accessing the web site should be directed to Paul Braun at 614-644-3734; other questions or comments about these rules should be directed to Jeff Beattie at Ohio EPA, (614) 6442269, jeffery.beattie@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.



SIGN-IN SHEET

Subject: NAPC SERC Rules
County: Statewide Date: 9.16.17

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME: Trent Dougherty E-MAIL: tdougherty@theoec.org
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TELEPHONE: 614 487 5823 FAX: _____

NAME: Chris Tavenor E-MAIL: ctavenor@theoec.org ✓
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DAPC SERC Rules Hearing

9/6/17

My name is Mary McCarron. I am with the Public Interest Center. I will be presiding over today's public hearing.

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.

Ohio EPA Division of Air Pollution Control is proposing revisions to Ohio Administrative Code Chapter 3750. These rules regard the State Emergency Response Commission.

These rules have been filed with the Joint Committee on Agency Rule Review. Copies of the rules are available for public review at Ohio EPA's Columbus Office and on our website.

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

To be included in the official record, written comments must be received by Ohio EPA by the close of business, today, September 6, 2017. These comments may be filed with me today or emailed to jeffery.beattie@epa.ohio.gov. All written comments submitted for the record receive the same consideration as oral 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.

If you wish to present oral testimony at this hearing today and have not already signed the registration sheet, please do so at this time. The sheet is available at the registration table. Persons will be called in the order in which they have registered.

There is no cross examination of speakers or of representatives of Ohio EPA in public hearings. Ohio EPA hearings such as this afford citizens the opportunity to provide comments on the official record. Therefore, we will not be able to answer questions during the hearing. However, members of the panel may ask clarifying questions of the person testifying to ensure the record is as complete and accurate as possible.

I will now read the names of those who have registered at this hearing and will give each person an opportunity to testify.

Is there anyone else who wishes to testify at this time?

Seeing no further requests for testimony, I remind you that written comments can be submitted through the close of business today.

Thank you for attending. The time is now and this hearing is adjourned.



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UNLEASHING THE POWER OF GREEN

Ohio EPA- Division Air Pollution Control
c/o Paul Braun
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

September 5, 2017

Comments of the Ohio Environmental Council on Ohio EPA's Proposed Amendments to Rules of the State Emergency Response Commission

The Ohio Environmental Council (OEC) submits these comments in response to the Ohio Environmental Protection Agency's (OEPA) decision to modify rules found at OAC §3750. In particular, the OEC will focus its comments on the changes made at OAC §3750-30-01, which will allow owners and operators of oil and gas extraction storage facilities to satisfy their reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) by reporting directly to the oil and gas management division of ODNR.

Ohio and Federal law task the Ohio Environmental Protection Agency (OEPA) and the State Emergency Response Commission (SERC) with the administration of regulations covering the reporting of hazardous chemicals by Ohio oil and gas well owners. As the agency tasked with the implementation of EPCRA, SERC must ensure that the spirit and letter of the law are satisfied to their fullest extent.

However, the OEC believes that the current proposed changes to the regulations place SERC's role in a questionable position. If SERC intends to promulgate these new changes to the OAC, it must also ensure that ODNR plays its role in creating its new database. That database will serve an important purpose under EPCRA, but SERC also must ensure that fire departments and local emergency planning committees receive the information necessary to do their jobs, and that the public has transparent access to the information provided in ODNR's future database. In addition, OEC encourages SERC, and the State of Ohio, to consider decreasing the timetables for reporting new extremely hazardous substances and hazardous chemicals, so as to better protect local communities and prepare local fire departments.

I. OEPA and SERC must ensure that ODNR creates the reporting database required under ORC §1509.231.

As the administrator of EPCRA, SERC has a duty to ensure that EPCRA's purpose is fulfilled. To that end, SERC has proposed the changes to OAC §3750 to align, justifiably, with ORC §1509.231, which requires ODNR to develop a database for use by the public, local emergency planning committees, SERC, and local fire departments.

But SERC has promulgated these changes to OAC §3750 before ODNR has developed this database; it has promulgated these changes before ODNR has even passed rules governing the creation of that database. EPCRA requires that each year, by March 1, owners and operators of regulated facilities submit their hazardous chemical inventory form.¹ Ohio law will now allow submission to ODNR's new database to satisfy the direct reporting requirements of EPCRA, in lieu of a direct report to local fire departments or emergency committees.² If SERC promulgates these changes in OAC §3750, allowing owners and operators of oil and gas extraction storage facilities to report directly to the division of oil and gas management at ODNR, SERC must ensure that ODNR develops their database by March 2018. If this is not possible, SERC must change their regulations so that oil and gas operators directly report to local emergency planning committees, fire departments, and SERC itself. Otherwise, the oil and gas operators will violate EPCRA; SERC, emergency planning committees, and fire departments will not have directly received the information required under EPCRA and Ohio law. SERC will have allowed such violations to occur.

II. SERC must ensure that local emergency planning committees, fire departments, and the public have robust access to the inventory forms and ODNR database.

Similarly, SERC must ensure that once ODNR has created their database, local emergency planning committees, fire departments, and the public have easy access to the information contained within. SERC is still the primary administrator of EPCRA; even if the database is housed at ODNR for ease of reporting for owners and operators, SERC still has a duty to ensure that EPCRA and laws created in furtherance of EPCRA are carried out in a lawful manner.

ORC §1509.231 states that ODNR must create this new database, and in doing so, it must specify to what extent the information is made accessible to the public; ensure that the information is made immediately available to the relevant parties; and include all information required by EPCRA and Ohio law. When SERC aligns OAC §3750 to the future database created by ODNR, it has a responsibility to ensure that those parties SERC used to ensure had access to information under EPCRA, still have access to information under EPCRA.

The OEC believes that SERC should assure the public that this database that operators of oil and gas extraction storage facilities must now report to will be understandable, accessible, and transparent. The public should have access to the database to its fullest extent, similar to other databases already accessible on ODNR's website. The public, and emergency professionals, have a right to know what hazardous chemicals exist within their local communities.

In addition, SERC should ensure that when owners and operators of oil and gas extraction storage facilities submit the information required under EPCRA by March 1 each year, the database updates immediately. Ohio law requires the submitted information be made accessible immediately, and that should include not only fire departments, and local emergency planning committees but the public as well. And "immediate" should mean within 48 hours. ORC

¹ 42 USC §11022.

² See 42 USC §11022(a), ORC §1509.231.

1509.231 requires immediate availability for this database: SERC should ensure that "immediate" actually means "immediate."

III. SERC should decrease reporting timetables for extremely hazardous substances so fire departments have immediate access to important information.

The OEC also encourages SERC, in their review of OAC §3750, to decrease reporting timetables when an owner or operator acquires a new regulated chemical, hazardous or extremely hazardous, at their facility. While both federal and state law require sixty days for the reporting of new extremely hazardous chemicals,³ Ohio has the authority to adopt rules "more stringent" than EPCRA.⁴

The OEC believes this may be a situation in which more stringent rules are needed. When an owner or operator of a oil and gas extraction storage facility stores extremely hazardous substances or hazardous chemicals, they place their local community and local emergency responders at risk. If these facilities do not notify emergency responders in a timely manner of new materials, how can emergency professionals adequately respond to emergencies at those locations? Ohio has drastically increased its oil and gas operations over the past decade; Ohio should also drastically enforce its regulations, to ensure the workers and communities connected with these new facilities are adequately protected. And the reporting will protect these oil and gas businesses, too; first responders can better protect these business assets if they know what chemicals they are dealing with upon arrival at a facility.

Respectfully Submitted,

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Chris Tavenor
Law Fellow
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³ See ORC §3750.05, 42 USC §11002(c).

⁴ ORC 3750.02



Division of Air Pollution Control Response to Comments

Rule: OAC 3750-1-01 and 3750-30-01

Agency Contact for this Package

Division Contact: Jeff Beattie, DAPC, 614-644-2269, Jeffrey.beattie@epa.ohio.gov

Ohio EPA held a public hearing and comment period ending on September 6, 2017 regarding various proposed amended rules in Ohio Administrative Code (OAC) Chapters 3750-1, 3750-15, 3750-25, 3750-30, and 3750-50. This document summarizes the comments and questions received at the public hearing and 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.

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 submitted comments to proposed amendments to OAC 3750-1-01, "Definitions and incorporation by reference." Specifically, suggesting 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. By 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; however Ohio EPA wants to ensure consistency with our rule writing guidance from the Legislative Services Commission (LSC). Ohio EPA will take comments into consideration during the next 5-year review period due to time constraints.
- Comment 2:** The commenter expressed concern to OAC 3750-30-01 which will allow owners and operators of oil and gas extraction storage facilities to satisfy their reporting requirements under the Emergency Planning and

Community Right-to-Know Act (EPCRA) by reporting directly to the oil and gas management division at ODNR. **(Melanie Houston and Chris Tavenor; Ohio Environmental Council)**

- Response 2:** The rule implements the changes made to the Ohio Revised Code 3750.081 and 1509.231 by the Ohio legislature. Until the ODNR electronic reporting system has been developed, the oil and gas regulatory community shall be provided with an alternative mechanism to submit the annual hazardous chemical inventory report. Currently the report is submitted to the Ohio EPA Right-to-Know Program on behalf of the SERC, to the jurisdictional fire department and to the county Local Emergency Planning Committee (LEPC).
- Comment 3:** The commenter states that once ODNR has created their database, local emergency planning committees, fire departments and the public must have easy access to the information contained within and in a lawful manner. **(Melanie Houston and Chris Tavenor; Ohio Environmental Council)**
- Response 3:** The intent is to have the ODNR database a web based system to ensure data reporting and availability to local responders and LEPCs.
- Comment 4:** The commenter states that SERC should decrease reporting timetables for extremely hazardous substances so fire departments have immediate access to EPCRA information. **(Melanie Houston and Chris Tavenor; Ohio Environmental Council)**
- Response 4:** This issue is not part of this proposed set of rules and will be addressed outside of this rulemaking.

End of Response to Comments