

Hearing Summary

Rule Package: OAC Chapter 3745-77, Title V Rules

Original filing date: 11/15/17

Public comment start date: 11/15/17

Public comment end date: 12/21/17

Public hearing date: 12/21/17, 3:30 PM, Ohio EPA Central Office, Columbus, Ohio

List of Rules: OAC 3745-77-(01 to 04, 06 to 10)

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 script read into the record to begin and end the hearing.
3. **Attachment C** - 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
Proposed amendment of
OAC Chapter 3745-77, "Title V Permit Rules"

Notice is hereby given that in accordance with Ohio Revised Code (ORC) 119.032 (5-year rule review), the Ohio Environmental Protection Agency, Division of Air Pollution Control (DAPC) has reviewed the rules contained in Ohio Administrative Code (OAC) chapter 3745-77. These rules govern the Title V Permitting Program. Our preliminary review indicates that these rules continue to be necessary and that amendment of some of the rules in this chapter is necessary.

Amendments are being made to rules 3745-77-01, 3745-77-02, 3745-77-03, 3745-77-04, 3745-77-06, 3745-77-07, 3745-77-08, 3745-77-09, and 3745-77-10 to bring the rules in line with federal requirements, to correct minor typographical errors, to fulfill the formatting requirements of the Legislative Services commission (LSC), and to add and update citation information on materials referenced in these rules. Specific information on the amendments to these rules can be found in the rule synopsis document, available electronically at the URL listed at the end of this notice. Ohio EPA also reviewed OAC rule 3745-77-05 and found that the rule remains necessary, but is without need of changes.

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 proposes them. On July 25, 2017, these rules went out for a 30-day review by interested parties. Ohio EPA received one comment on the draft rule language.

Pursuant to Section 119.03 of the Ohio Revised Code, a public hearing on these rule changes will be conducted on **Thursday, December 21, 2017 at 3:30 PM** 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 December 21, 2017, will be considered by Ohio EPA prior to final action on this rule. Written statements submitted after December 21, 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 Regulations Web page for electronic downloading. See the information under the “Proposed Rules” tab at: <http://epa.ohio.gov/dapc/DAPCrules.aspx>. 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 Benjamin Cirker at Ohio EPA, (614) 644-3697, benjamin.cirker@epa.ohio.gov or mailed to Benjamin Cirker, Ohio EPA, Division Air Pollution Control, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049.

BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY

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In Re:

Proposed Amendment of Ohio Revised Code
Chapter 3745-77, Title V Permit Rules.

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PROCEEDINGS

Before Heather Lauer, Public Involvement
Coordinator in Ohio EPA's Public Interest
Center, held at the offices of the Ohio
Environmental Protection Agency, 50 West Town
Street, Suite 700, Conference Room C, Columbus,
Ohio, on Thursday, December 21, 2017, at 3:30
P.M.

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1 Thursday Afternoon,

2 December 21, 2017.

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4 MS. LAUER: My name is Heather
5 Lauer. I am a Public Involvement Coordinator in
6 the Ohio EPA's Public Interest Center. I will
7 preside over today's public hearing.

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

13 Ohio EPA's Air Pollution Control is
14 proposing to amend Rules 3745-77-01 through -04
15 and 3745-77-06 through -10 of the Ohio
16 Administrative Code. These amendments will
17 bring the rules in line with federal
18 requirements to correct minor typographical
19 errors, to fulfill the formatting requirements
20 of the Legislative Services Commission (LSC) and
21 to add and update citation information on
22 materials referenced in these rules. Specific
23 information on the amendments to these rules can
24 be found in the rule synopsis document,

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1 available at
2 <http://epa.ohio.gov/dapc/DAPCrules.aspx>.

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

7 All interested persons are entitled
8 to attend or be represented, and to present oral
9 and/or written comments concerning the proposed
10 rules. All written and oral comments received
11 as part of the official record will be
12 considered by the Director of Ohio EPA.

13 To be included in the official
14 record, written comments must be received by
15 Ohio EPA by the close of business today,
16 Thursday, December 21, 2017. These comments may
17 be filed with me today. All written comments
18 submitted for the record receive the same
19 consideration as oral testimony given today and
20 should be sent to benjamin.cirker@epa.ohio.gov.

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

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

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

17 Seeing there is no one here to
18 testify we will go off the record until someone
19 wishing to testify appears or at 4:00 o'clock.

20 (RECESS TAKEN)

21 MS. LAUER: The time is now 4:00
22 o'clock, and this hearing is adjourned.

23 (At 4:00 P.M. the hearing was
24 concluded).

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CERTIFICATE

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I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
December 21, 2017, and carefully compared with
my original stenographic notes.

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Michael O. Spencer
Michael O. Spencer,
Registered Professional
Reporter.

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Division of Air Pollution Control Response to Comments

Rule: OAC Chapter 3745-77 "Title V Rules"

Agency Contact for this Package

Division Contact: Benjamin Cirker, Division of Air Pollution Control, benjamin.cirker@epa.ohio.gov

Ohio EPA held a comment period between November 16 and December 21, 2017 regarding the five-year review of the rules governing Ohio EPA's Title V program. This document summarizes the comments and questions received during the associated comment period, which ended on December 21, 2017.

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

3745-77-01 Definitions, 3745-77-08 Permit Issuance, Modifications, Revisions, Revocations, Re-openings and Termination

Comment 1: Proposed change in the definition of "administrative permit amendment" in OAC 3745-77-01(C)(5) Ohio EPA proposes to delete subparagraph (C)(5) from Ohio Admin. Code ("OAC") 3745-77-01, eliminating the option to use the administrative permit amendment procedure to incorporate federally enforceable PTI terms that are consistent with the procedural requirements for a Title V permit modification and substantially equivalent to Title V compliance requirements. The proposed deletion would diminish efficiency and flexibility for the Agency and regulated entities alike. Consequently, such deletion would conflict with the statutory mandate in R.C. 3704.036(M) to "develop procedures for the Title V permit program such that the program shall minimize procedural burdens and maximize source operational flexibility to the extent consistent with the federal Clean Air Act."

In its Response to Comments on the Interested Party Review for these rules, Ohio EPA states it proposes deletion of OAC 3745-77-01(C)(5) because: We have determined that the use of the Administrative Permit Amendment (APA) is not the appropriate vehicle for incorporating federally enforceable requirements into a Title V permit. Instead, this would be processed as a significant permit modification. This will have very little impact on permittees.

These broad, conclusory statements are not supported and do not justify the proposed repeal.

Determining that an administrative permit amendment is not the "appropriate vehicle" for incorporating certain PTI terms into Title V permits contradicts the mandate in R.C. 3704.036(M) and the fact that OAC 3745-77-01(C)(5) is appropriate enough to have been fully approved by U.S. EPA. The response refers broadly to "federally enforceable requirements," but the administrative permit amendment process in OAC 3745-77-01(C)(5) applies only to that subset of federally

enforceable requirements in PTIs that look just like Title V permits, and that were established in a manner equivalent to a Title V significant permit modification. There is no reason to process such PTI terms as a “significant modification” of a Title V permit, as that would pointlessly duplicate the very same procedures as the PTI process and result in the very same permit terms as are already in the PTI. Such wasteful procedural redundancy would clearly violate the statutory directive that Ohio’s Title V rules be “no more stringent than[] the requirements of Title V of the federal Clean Air Act and 40 C.F.R. part 70.” R.C. 3704.036(B). Finally, the Agency’s assumption that being forced into a significant permit modification instead of an administrative permit amendment “will have very little impact on permittees” is untenable. Title V significant permit modifications are quite time-consuming and administratively burdensome. A time gap for aligning federally enforceable PTI terms with Title V terms, especially in the case of the same unit/pollutant combination, creates a compliance nightmare for permittees. And duplicating the same procedures for the same permit terms exposes the Agency and the permittee to a second opportunity for third-party comments and litigation. These impacts on Title V permittees are anything but “little.”

OAC 3745-77-01(C)(5) has been approved by U.S. EPA since 1995. It would be bad public policy, unlawful, and unreasonable to delete it from the rules now. Ohio EPA should also retain the permit shield applicable to administrative permit amendments in OAC 3745-77-08(B)(2). (Robert Brubaker, on behalf of the Ohio Chemistry Technology Council, Ohio Chamber of Commerce, Ohio Manufacturer’s Association)

Response 1: We have reverted to the previous language; no changes are being made at this time.

Comment 2: The Utilities have comments on two specific revisions Ohio EPA has proposed that we wish to see addressed before the rule is finalized. The first revision is Ohio EPA’s proposed change to the definition of “administrative permit amendment,” OAC 3745-77-01(C) (and the corresponding change to OAC 3745-77-08(B)(2)). Ohio has proposed to remove the incorporation of federally enforceable PTI requirements from the administrative permit amendment process, even where a PTI was issued with similar notice and comment requirements to a Title V permit revision. This change is a mistake and Ohio should leave the federally approved rule as it is.

The Utilities commented on this proposal in an earlier round of comments questioning the basis for the change. In the response to comments, Ohio EPA replied: Response 1: We have determined that the use of the Administrative Permit Amendment (APA) is not the appropriate vehicle for incorporating federally enforceable requirements into a Title V permit. Instead, this would be processed as a significant permit modification. This will have very little impact to permittees.

This response is incorrect and inadequate. First and foremost, and contrary to Ohio EPA’s assertions, this change will have a great impact on permittees. The process of modifying a PTI for a major source is a time consuming and lengthy action. Often, the modification is to allow changes in existing operations at a Title V source. Even after a PTI is issued, if the modification is inconsistent with terms in the existing Title V permit, the permittee must wait until the Title V permit is also modified before commencing modified operations. The administrative permit amendment as now written makes that process quick and efficient. Deleting this provision will defeat this. Requiring permittees to go through a full Title V permit modification process will add months to implementing the changes in the PTI, even though the changes were subject to full public review and comment during the PTI process. A duplicative Title V process that immediately

follows the PTI process is unnecessary and expensive for both the permittee and the agency. Ohio EPA was right to handle the incorporation of such PTI terms through a Title V administrative permit amendment in the original Title V rules. This proposed revision will have a significant detrimental impact on permittees.

Further, Ohio EPA seems to have no legitimate basis for this change. In the response to comments, Ohio EPA simply states that these changes are “no longer allowed.” How? Has US EPA issued a SIP call or notice of deficiency for Ohio’s Title V program? If so, can Ohio EPA provide copies of the formal action by US EPA requiring the state to change its currently approved program? The statement “no longer allowed” is not a lawful basis for revising a 20 year old, federally approved rule. Absent a formal action by US EPA to require a change in the existing rule, there is no justification for this proposed change. Ohio EPA should and must leave the rule as it is in regard to administrative permit amendments.

The second concern the Utilities have is with the proposed revision to OAC 3745-77-02(G) Insignificant activities and emission levels. Ohio EPA has proposed to eliminate the exemption for these very small and insignificant sources from the Title V application. Why? These sources have been exempt from Title V applications since the onset of the program. This exemption is federally approved. These sources, even in aggregate, are so small and insignificant that their impact is negligible. The paperwork and documentation necessary to include them in the application is unreasonable by comparison. (Michael Born, on behalf of the Ohio Utility Group)

Response 2: We have reverted to the previous language; no changes are being made at this time.

3745-77-01 to 77-10

Comment 3: Ohio EPA has proposed a number of housekeeping and clerical revisions to the Chapter 77 rules. We believe some of the stylistic changes have substantive impacts, or create confusion, that was not intended. We respectfully recommend the following changes:

- * In the first line in OAC 3745-77-01(C), change “fulfills” to “does”.
- * In OAC 3745-77-01(E)(2), delete the words “That are”.
- * In the first line of OAC 3745-77-01(X)(3), do not add “all of the following”. The examples each apply independently, not collectively. Additionally, section (X)(3)(c) would be easier to read if the colon and subparagraph numbers were removed and the entire section were condensed, as follows: “For carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit fifty TPY or more of carbon monoxide”.
- * In the first line of OAC 3745-77-01(GG), change “meets” to “is” and “one” to “any”.
- * In the first line of OAC 3745-77-01(KK), change “one” to “either or both”.
- * In the first line of OAC 3745-77-02(C)(3), change “all” to “any”.
- * In OAC 3745-77-07(C)(2), change “all” to “any”. (Robert Brubaker, on behalf of the Ohio Chemistry Technology Council, Ohio Chamber of Commerce, Ohio Manufacturer’s Association)

Response 3: Agree with suggestions and changes were made to rule text.

End of Response to Comments