MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Paula Steele, Regulatory Policy Advocate

DATE: June 23, 2015

RE: **CSI Review OAC Chapter 3745-21 – Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards** (OAC 3745-21-01, 3745-21-03, 3745-21-04, 3745-21-06 to 3745-21-09, Appendix A and Appendix B, 3745-21-10 Appendix A through Appendix C, and 3745-21-12 to 3745-21-29)

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This Ohio Environmental Protection Agency's (OEPA) rule package consists of twenty-six draft rules – twenty-four amended, one new and one no-change – being proposed under the five-year review requirements of Ohio statute. The proposed rule package addresses emissions of volatile organic compounds (VOC) and carbon monoxide (CO) from stationary sources. The rule package was submitted to the CSI Office on October 30, 2014 with the comment period ending on December 2, 2014. Eight comments were received during the comment period.

The proposed rules enable Ohio to limit emissions of VOC and CO pollutants that are driven by the requirements of the federal Clean Air Act which requires all states to attain and maintain National Ambient Air Quality Standard (NAAQS). In general, the majority of the proposed amendments address only VOCs and set limits, monitoring and reporting requirements for emissions from

stationary sources such as dry cleaning facilities, commercial bakeries, wood furniture manufacturers, commercial motor vehicles and more.

Several iterations of the BIA were provided to the CSI Office upon request for additional information prior to the OEPA's Response to Comments. On May 15, 2015, the OEPA responded to comments made during the comment period. Upon review of the responses, the CSI Office met with the OEPA to gain additional clarification and to request additional explanations to the BIA and the Response to Comments document, particularly concerning the adverse impact to business. On June 15, 2015, a revised BIA and Response to Comments were provided.

As a result of the comments, the OEPA agreed to revise the proposed rules in five locations. Two comments were in support of specific proposed rule changes and one comment did not apply to the proposed rules. One comment disagreed with the OEPA's proposed addition of the word "existing" to OAC 3745-21-7 (M)(5)(g) because this amendment changes regulatory requirements of previously exempt facilities (sources), located in specific counties and considered "new" (constructed or modified on or after February 15, 1972).[1] According to the OEPA, this change is being proposed in order to close a gap and inconsistency in the regulation that was identified in an Environmental Review Appeals Commission (ERAC) decision.[2] Essentially, without the insertion of "existing," seven counties bordering the most urban, industrial counties (e.g., Perry County), with "new" *and* "existing" facilities are exempt from these requirements while "new" sources in the most urban, industrialized counties and those in the least urban, rural counties are required to comply with OAC rule 3745-21-07(M)(4). According to the OEPA, one facility will be impacted by this regulation because all other facilities in the seven counties already comply with how the OEPA has interpreted and enforced the rule.

Upon review of the proposed rules, revised BIAs, revised Response to Comments, and follow-up discussions with the OEPA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules is justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Environmental Protection Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Director of Regulatory Policy

[1] OAC 3745-15-01 (S)

[2] http://erac.ohio.gov/Portals/0/SCHMELZER%20INDUSTRIES%206809.pdf