

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: November 7, 2016

RE: **CSI Review – Chapter 3745-18: Sulfur Dioxide Regulations (OAC 3745-18-01, and 3745-18-03 to 3745-18-94)**

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 rule package consists of 93 rules—92 amended¹ and one no-change—being proposed by the Ohio Environmental Protection Agency (EPA), Division of Air Pollution Control (DAPC) for review under the statutory five-year rule review requirement. The package was submitted to the CSI Office on July 22, 2016, and the comment period closed on August 26. Ohio EPA provided the CSI Office with Response to Comments on October 26 and a revised BIA on November 2.

The rules in this package establish monitoring, testing, recordkeeping, and reporting requirements for the control of sulfur dioxide (SO₂) emissions from stationary emission sources. SO₂ is one of six pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under the federal Clean Air Act (CAA). In addition to protecting Ohioans, these rules help Ohio limit emissions to the point where it is able to attain and maintain NAAQS. The rules in this chapter are part of Ohio's State Implementation Plan (SIP), which is required by the CAA for any state with areas failing to meet the SO₂ NAAQS. Amendments being proposed include correcting a deficiency identified by the United States EPA; removing facility-specific emission requirements for facilities that have shut down; adding new facilities and emission requirements for them; updating names,

¹ In OAC Chapter 3745-18, rules 10, 12, 17, 18, 19, 24, 28, 29, 31, 34, 35, 37, 38, 41, 44, 45, 50, 51, 53, 55, 57, 63, 64, 71, 72, 75-77, 79, 80, 83-85, 86, 88-90 and 93 are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the rules be rescinded and replaced with new rules with the same numbers.

premise numbers, addresses, and compliance dates; removing duplicate facilities and unnecessary paragraphs; correcting citations; and revising grammatical errors.

The proposed rules impact all coal-fired, steam-generating units in Ohio. Potential adverse impacts from the rules include attaining and maintaining specific SO₂ emission limits, performing monitoring and testing, maintaining records, and developing reporting documents. Chapter 3745-18 has been enforced since 1979, so facilities subject to the rules have long since installed controls and continue to operate under the terms of their air pollution control permits. In addition, the primary focus of these amendments is to remove facility-specific rule language from the rules for facilities and emission units that are no longer operating; there is no cost to these facilities. Overall, the cost of compliance could range from a few hundred dollars for a control technology, such as a raw material change, to a few million dollars for the installation and operation of a mechanical control device. All entities have already incurred these costs, except for continued monitoring, testing, reporting, and recordkeeping. While infrequent, fines could also be imposed for rule violations. The BIA states that the rules are justified because the CAA requires that Ohio bring SO₂ nonattainment areas into attainment. They also protect public health and welfare.

Ohio EPA engaged over 1,300 stakeholders with an interest in DAPC rulemaking between February and March 2015. DAPC also posted a notice on the Ohio EPA website and in the Director's Weekly Review. Three comments were submitted recommending that Ohio EPA make facility-specific changes to the regulations, including removing additional shut down facilities. Ohio EPA made the required changes based on these suggestions. During the CSI public comment period, six comments were submitted. In these comments, stakeholders notified Ohio EPA of errors it had made in its revisions, advised it to remove more shut down facilities, and suggested minor language revisions. Ohio EPA made most requested changes, except those made by the U.S. EPA, since Ohio EPA had not received feedback from the U.S. EPA regarding suggested changes to nonattainment plan elements until this five-year review. Prior to the review, the U.S. EPA had informed Ohio EPA that additional controls and more stringent emission limitations were not warranted. The suggested changes will require Ohio EPA to work with the U.S. EPA going forward but cannot be addressed in the short-term. No additional comments were submitted. Therefore, the CSI Office has determined the purpose of the rules to be 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, Lt. Governor's Office