

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: April 26, 2017

RE: **CSI Review – Chapter 3745-17: Particulate Matter Standards (OAC 3745-17-01, 3745-17-03, 3745-17-04, and 3745-17-07 to 3745-17-14)**

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 11 amended¹ rules 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 June 7, 2016, and the comment period closed on July 8, 2016. Ohio EPA provided the CSI Office with Response to Comments on March 22, 2017.

The rules in this package establish requirements for the control of emissions of particulate matter from stationary emission sources, since particulate matter is one of six pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under the federal Clean Air Act (CAA). 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 particulate matter NAAQS. Amendments are being proposed to introduce an additional compliance option for certain facilities that are required to use a continuous opacity monitor (COM) to determine compliance with visible emissions requirements per rule 3745-17-03(C). In situations where a COM would not provide accurate visible emissions determinations, an owner or operator may install a particulate matter

¹ OAC 3745-17-12 is being amended by more than 50 percent. The Legislative Service Commission requires that the rule be rescinded and replaced with a new rule with the same number.

continuous emission monitor (CEM) per new paragraph (D) in the same rule. Ohio EPA is also adding an additional compliance option as paragraph (E) that allows an alternative monitoring plan instead of the aforementioned CEM. In addition, amendments are being proposed to correct grammatical errors, remove permanently shut down facilities and update existing facility data, revise definitions, correct references, and improve readability.

Chapter 3745-17 has been in the Ohio Administrative Code since 1972, and the majority of facilities that are subject to these rules have long since installed controls and continue to operate them under the terms of their air pollution control permits. As for potential adverse impacts of the rules, there is no cost to facilities that have already permanently ceased operations, a major focus of revisions to the chapter. The cost of compliance for facilities that are still operating can range from a few hundred dollars, for a control technology such as a work practice or raw material change, to a few million dollars for the installation and operation of a mechanical control device. That being said, all of the entities required to incur these costs of compliance already did so many years ago. Other potential adverse impacts include monitoring, reporting, and record keeping, all of which help document that standards are continuing to be achieved. The Agency's BIA states that the rules are justified because the requirements imposed by the rules are already incorporated in air pollution control permits. In addition, the CAA requires that Ohio bring particulate matter nonattainment areas into attainment, and then maintain the particulate matter NAAQS.

Ohio EPA engaged over 1,250 stakeholders with an interest in DAPC rulemaking. DAPC also posted a notice on the Ohio EPA website and in the Director's Weekly Review. Several comments were submitted in response to these distributions. Ohio EPA made changes where appropriate, such as revising incorrect references, clarifying language to address stakeholder confusion, and, as referenced above, adding paragraphs (D) and (E) to rule 3745-17-03 to provide alternatives that can exempt facilities from the COM requirements of paragraph (C).

During the CSI public comment period, five comments were submitted. In the Response to Comments provided by the Agency, Ohio EPA indicated where it would make revisions to the rules based on stakeholder recommendations, while also providing rationale for not implementing other recommendations. Among other revisions, Ohio EPA changed the rules to revise the definition for "salvageable material;" add definitions for terminology such as "fireplace," "pellet fuel," and "residential forced-air furnace;" revise additional incorrect references; and update a section of rule 3745-17-03 to remove the phrase "or another USEPA-approved alternate opacity determination method" to clarify that it is in fact up to an owner or operator to choose from among the permissible means for determining compliance with opacity requirements, rather than being subject to further approval. As for an example of rationale provided for not implementing other suggested revisions, in response to a recommendation to simplify amendments to rule 3745-17-03 by deleting SIP requirements for opacity monitoring derived from certain federally enforceable requirements, Ohio EPA stated that it cannot delete these requirements because other federal rules are applicable to the source. In other words, the rule establishes requirements for facilities to show compliance with Ohio's opacity regulations, which are developed to attain and maintain particulate matter standards as part of Ohio's SIP, not federal rules established for other purposes. After reviewing all proposed

changes to the rules, the CSI Office determines 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: Emily Kaylor, Lt. Governor's Office