

**MEMORANDUM**

TO: Michelle Mountjoy, Ohio Environmental Protection Agency

FROM: Christopher Smyke, Lt. Governor's Office

DATE: July 21, 2017

RE: **CSI Review – Acid Rain Operating Permits for Electrical Generating Units**
(OAC 3745-103-01 to 3745-103-09, 3745-103-11 to 3745-103-29, 3745-103-31 to
3745-103-39, 3745-103-41 to 3745-103-45, 3745-103-47, 3745-103-48, 3745-103-50
to 3745-103-53, 3745-103-55 to 3745-103-63, 3745-103-65, and 3745-103-66)

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 eight no-change and fifty-one amended rules proposed by the Ohio Environmental Protection Agency (OEPA) for their statutorily-required five-year review. The rule package was submitted to the CSI Office on June 2, 2017 and the public comment period was held open through July 11, 2017. No comments were received during that time.

Ohio Administrative Code (OAC) Chapter 3745-103 outlines OEPA regulations for the Acid Rain Program, which establishes limitations on the emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) from electrical generating units that are powered by fossil fuels. The rules also establish procedures for acid rain permits, in compliance with 40 CFR Part 76 and Title IV of the Clean Air Act; the BIA states that the rules meet, but do not exceed federal requirements. The proposed amendments include changes to align with the equivalent federal rules, correct cross-references and typographical errors, and conform to agency formatting standards. The changes

are non-substantive and do not impact the scope or intent of the pre-existing rules.

OEPA conducted a 30-day early stakeholder outreach period in November 2015. The Division of Air Pollution Control (DAPC) sent a request for comments electronically to its over 1,300 member interested party distribution list for rulemaking. The DAPC also posted a notice of the rule changes on its website and in the Director's Weekly Review publication. No comments were received during either the early stakeholder outreach period or the CSI public comment period.

The federal and state acid rain regulations require utility generating units operating in Ohio to reduce SO₂ and NO_x emissions to below 1980 levels. In addition to the BIA, OEPA furnished a fiscal analysis document that was developed in 2006 and updated with more current information regarding the price of SO₂ and NO_x allowances. The fiscal analysis provides a table that details the aggregate annual cost of information collection under Ohio rules in terms of time (112,304 man-hours) and money (approximately \$14.9 million). OEPA's analysis also estimates the aggregate cost for Ohio for curtailing emissions at approximately \$750 million for 125 affected units in Ohio. However, since the proposed amendments to the rules are non-substantive changes to form and reference, the impact of the amendments is negligible.

The BIA justifies the impact of the existing rules by the need to comply with federal law in the Clean Air Act. In addition, the rules assist in the attainment and maintenance of the National Ambient Air Quality Standards. After reviewing the proposed rules, the BIA and stakeholder outreach the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding 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