

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: November 21, 2018

RE: **CSI Review – Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards (OAC 3745-21-01, -09, -10, -25, -26, -28, and -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 rule package consists of seven amended rules proposed by the Ohio Environmental Protection Agency (OEPA) for review. The rule package was submitted to the CSI Office on March 21, 2018 and the public comment period was held open through April 25, 2018. Three comments were received during that time and OEPA provided a response to comments on August 14, 2018.

Ohio Administrative Code (OAC) Chapter 3745-21 sets forth the standards for controlling emissions of volatile organic compounds (VOCs) and carbon monoxide from stationary sources. This package proposes amendments to select rules in the Chapter, all related to VOCs. Amendments add approval of an alternate reporting, record keeping and reporting plan for facilities, an additional test method in OAC 3745-21-10, an exemption to OAC 3745-21-26 for certain sources, and allowing for alternative limits in OAC 3745-21-28. In addition, the rules

include typographical and reference corrections, as well as a clarification on record keeping and reporting requirements in OAC 3745-21-16.

The current rulemaking is the result of input received by OEPA since the previous five-year review of OAC Chapter 3745-21 in 2015. OEPA received a comment after the draft comment period, an approved alternative monitoring protocol, multiple questions from stakeholders, and a request for relief from the requirements of OAC 3745-21-28. Prior to filing the draft rules with CSI, OEPA posted the draft rules online and electronically notified members of the Division of Air Pollution Control's interested party list, which includes over 1,250 stakeholders. The BIA includes a detailed synopsis of the six comments and agency responses prior to the development of the draft rules, as well as the four comments received during early stakeholder outreach.

During the CSI public comment period, OEPA received comments from three individuals. On August 14, 2018 OEPA provided the CSI Office with a document detailing the Agency's responses to each comment, and the changes made as a result of stakeholder input. All three comments related to VOC emission rates, requesting that OEPA delete the requirement to test at above ninety-percent of the maximum throughput. Upon discussing the suggestion with internal staff and U.S. EPA, OEPA elected to incorporate the commenters' suggestion. One commenter also proposed the removal of OAC 3745-21-10(F)(3)(b) related to test method requirements for VOC leak detection. OEPA determined that the provision is consistent with U.S. EPA rules and test methods and opted to keep the provision in the draft rules.

The BIA states that the rules impact stationary emission sources. The BIA acknowledges that given the wide variety of facilities in type, size, and processes of facilities, and therefore degrees of air pollution, that a precise estimate of the cost of compliance is not feasible. The cost of the rules could range anywhere between hundreds of dollars to several million dollars. The proposed amendments do not add any new requirements to the existing rules, with the exception of the new provision which allows facilities to request an alternate reasonable available control technology emissions limit if the rule-based limit is technically or economically unfeasible. While this provision permits an alternative pathway to compliance, the BIA estimates the cost of assembling the required documentation for the exemption could range from \$500 to \$10,000.

OEPA justifies the proposed rules in order to maintain compliance with the federal Clean Air Act, as VOCs are a precursor to Ozone, one of the six criteria pollutants covered by the National Ambient Air Quality Standard. The rules protect public safety and maintain compliance with federal law by limiting the output of VOCs. In addition, the current rulemaking is the result of OEPA's responsiveness to stakeholders, who have raised concerns in the period since the Chapter's last five-year review. In general, the amended rules provide clarity and additional avenues to compliance for the affected business community.

After reviewing the proposed rules and BIA, the CSI Office has determined that the rule package

satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rules 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