



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### MEMORANDUM

**TO:** Amanda Payton, Ohio Environmental Protection Agency

**FROM:** Joseph Baker, Director

**DATE:** October 27, 2022

**RE:** **CSI Review – General Provisions on Air Pollution Control, Portland Cement Kilns, and Control of Visible Particulate Emissions from Stationary Sources (OAC 3745-14-11, 3745-15-01, OAC 3745-15-02, OAC 3745-15-03, OAC 3745-15-04, OAC 3745-15-05, OAC 3745-15-06, OAC 3745-15-07, OAC 3745-15-08, OAC 3745-15-09, and OAC 3745-17-07)**

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On behalf of Lt. Governor Jon Husted, 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 six amended rules and five no-change rules from the Ohio Environmental Protection Agency (OEPA). This rule package was submitted to the CSI Office on June 10, 2022, and the public comment period was held open through July 8, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on June 10, 2022.

Ohio Administrative Code (OAC) 3745-14-11 sets forth requirements for Portland cement kilns, with process rates of at least ten tons per hour, depending on the type of kiln, including reporting and recordkeeping responsibilities for kiln emissions, operating dates and times, production amounts, and performance testing results. OAC 3745-15-01 sets forth definitions for terms used in air pollution rules and has been amended to establish definitions for malfunctions, streamline language, update

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references, and define acronyms. OAC 3745-15-02 sets forth the purpose of all air pollution rules, which is to secure and maintain levels of air quality consistent with the protection of health and prevention of injury, and to provide for enjoyment of natural attractions of the state. OAC 3745-15-03 authorizes the Director of OEPA (Director) to require the submission of records or reports in a manner prescribed by the Director and sets standards surrounding responsibilities to file periodic reports, quarterly reports, and permit evaluation reports. The rule is amended to streamline language.

OAC 3745-15-04 sets forth the authority of the Director to require any individual responsible for emission of air contaminants to conduct source testing to determine if excess emissions are taking place, or to conduct testing or install monitoring equipment on any source at the Director's discretion. OAC 3745-15-05 sets forth standards for the *de minimis* exemption for air contaminant sources, which exempts air contaminant sources that emit less than ten pounds of air contaminants per day from Chapter 3704 of the Revised Code and related rules. The rule has been amended to streamline language.

OAC 3745-15-06 requires air pollution control equipment to be maintained according to standards defined in the rule and addresses the management of equipment malfunctions. The rule has been amended to specify that the Director is authorized to evaluate whether reporting requirements have been completed, to require that owners or operators of sources being shut down for maintenance take all practicable measures to minimize the duration of the shutdown and all feasible interim control measures to reduce emissions during the maintenance period, to require the Director to be notified after completion of maintenance process, to require the reporting of any emission limit or permit term being exceeded, to reduce certain reporting thresholds from seventy-two to twenty-four hours for equipment malfunctions, to require any adverse impacts on human health or the environment to be reported to OEPA in the event of an equipment malfunction, and to make other minor changes.

OAC 3745-15-07 prohibits air pollution emissions deemed to be a public nuisance. OAC 3745-15-08 prohibits any person from installing or using devices designed to conceal or dilute an air contaminant that would otherwise violate standards prescribed in rules or statute. OAC 3745-15-09 establishes the severability of any provision in the Revised Code or Administrative Code deemed to be invalid. Finally, OAC 3745-17-07 specifies limitations on particulate emissions from stationary sources, including setting specific thresholds for various types of particulate emissions and defining exceptions to the thresholds. The rule is amended to streamline language and remove regulatory restrictions.

During the early stakeholder review process, OEPA provided the rules to approximately 3,300 entities registered to receive notification regarding Division of Air Pollution Control rules and posted the information on its website. Based on comments from stakeholders, OEPA incorporated a definition for equipment malfunctions, updated hyperlinks and publication dates, provided additional

flexibility for maintain records at an alternate location, and corrected a typographical error. During the CSI public comment process, comments were received from the Columbus Department of Public Utilities, Ohio Cast Metals Association (OCMA), AMG Vanadium, Toledo Refining Company, as well as joint comments from a coalition of business groups including the Ohio Manufacturers' Association, Ohio Chamber of Commerce, Ohio Oil and Gas Association, Ohio Chemistry and Technology Council, and American Petroleum Institute-Ohio (Coalition). Columbus Department of Public Utilities requested several definitional clarifications, to which OEPA responded but did not adopt changes. OCMA, Toledo Refining Company, and AMG Vanadium recommended removing a requirement that an entity notify OEPA regarding exceeding an allowable limitation through the 24-hour spill hotline, even in cases where no imminent risk exists. In response, OEPA removed the provision from the rule. OCMA also recommended clarifying a notification requirement to make clear that the regulated entity may provide notice by means other than certified mail, a change also agreed to by OEPA.

Both OCMA and the Coalition recommended that OEPA determine not to reduce the reporting threshold for source malfunctions from seventy-two to twenty-four hours and allow the owner or operator to provide the report within two weeks of the event. However, OEPA determined not to adopt these recommendations as it states that such events should be reported to ensure that OEPA is made aware of the problem. Toledo Refining Company noted that the information required in certain initial notifications to OEPA may not be readily accessible to the individual providing the report. OEPA agreed with the comment and stated that information can be added to the report when additional details are available. The Coalition also requested that OEPA exempt an air pollution control equipment failure that is foreseen and prevented due to maintenance, but OEPA declined to adopt this change, explaining to CSI that it determined such events are appropriately classified, and that businesses may already propose a scheduled maintenance plan for approval by OEPA to address routine maintenance considerations. The Coalition also requested removal of newly proposed language placing new limitations on an exemption for stationary source malfunctions or shutdown emissions limitations and recommended various other clarifying changes which were also agreed to by OEPA.

The business community impacted by the rules includes facilities approved for an air pollution control permit by OEPA. The adverse impacts to business include time and expenses associated with complying with monitoring and reporting requirements (OEPA estimates costs of a few thousand dollars), completing testing when required by the Director (between a few hundred dollars to up to \$20,000 annually), complying with recordkeeping responsibilities, preventing odor nuisances (costing up to several millions of dollars), and limiting NO<sub>x</sub> emissions from cement kilns. OEPA notes that the State of Ohio is required under the Clean Air Act to prepare a plan to assist in the attainment and maintenance of the National Ambient Air Quality Standards. OEPA states that the adverse impacts to business are justified to provide basic rules that address the general provisions of

the air pollution control program, and to comply with federal requirements.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that OEPA should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.