



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Michael Bender, Business Advocate

DATE: July 28, 2022

RE: **CSI Review – Permit-to-Install New Sources and Permit-to-Install and Operate Program (OAC 3745-31-01, 3745-31-02, 3745-31-03, 3745-31-04, 3745-31-05, 3745-31-06, 3745-31-07, 3745-31-08, 3745-31-09, 3745-31-10, 3745-31-11, 3745-31-12, 3745-31-13, 3745-31-14, 3745-31-15, 3745-31-16, 3745-31-17, 3745-31-18, 3745-31-19, 3745-31-20, 3745-31-21, 3745-31-22, 3745-31-23, 3745-31-24, 3745-31-25, 3745-31-26, 3745-31-27, 3745-31-28, 3745-31-29, 3745-31-30, 3745-31-32, and 3745-31-33)**

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This rule package consists of two new rules, twenty-seven amended rules, three no-change rules, and one rescinded rule proposed by the Ohio Environmental Protection Agency (OEPA). The no-change, amended, and rescinded rules were submitted as part of the statutory five-year review process. This rule package was submitted to the CSI Office on July 29, 2021, and the public comment period was held open through August 31, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 29, 2021.

Ohio Administrative Code (OAC) 3745-31-01 specifies definitions related to air contaminants and emissions. The rule is amended to create alphabetical sections for the definitions, add terms, streamline language, and update citations. OAC 3745-31-02 states that the chapter provides for the requirements for installation, modification, or operation of new and existing air contaminant sources at facilities which are, are not, or will be subject to OAC 3745-77 and requires the obtainment of a

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permit-to-install (PTI) or a permit-to-install and operate (PTIO) from the Director of the OEPA (Director) prior to such actions. The rule is amended to streamline language and update citations. OAC 3745-31-03 is rescinded, with its contents split between a new rule with the same number and new rule OAC 3745-31-30 as a result of its length and complexity. OAC 3745-31-03, the proposed new rule, provides for the exemptions to the aforementioned requirement to obtain a PTI or PTIO from the Director, including new permanent exemptions and revisions to preexisting ones. OAC 3745-31-04 provides for applications for PTI's and PTIO's. OAC 3745-31-05 specifies the criteria by which the Director shall issue a PTI or PTIO. The rule is amended to update citations, clarify that a source may be subject to best available technology (BAT) requirements if modified after January 1, 1974, and revise the table displaying the divisions with which the Director must coordinate when reviewing and issuing a permit. OAC 3745-31-06 provides for the process by which the Director determines completeness of a permit application, the time limits for the Director to issue or deny a permit or permit renewal, and notification to the public and affected federal land managers of proposed new or modified sources. The rule is amended to streamline language and update a citation. OAC 3745-31-07 provides for the termination, revocation, expiration, renewal, revision, and transfer of a permit. The rule is amended to streamline language, update typography, and add two additional modifications to the requirement that a PTI or PTIO terminate after eighteen months.

OAC 3745-31-08 authorizes the Director to require the owner or operator of an air contaminant source which obtained registration status prior to June 30, 2008, to submit an updated application for a PTIO or variance for continuation of such status. OAC 3745-31-09 provides for the issuance and obtainment of a variance from the Director which allows operation of an air contaminant source that emits an air pollutant in violation of applicable law. The rule is amended to streamline language and update a citation. OAC 3745-31-10 specifies requirements for owners and operators who undertake construction of New Source Review (NSR) projects at existing emissions units at a major stationary source. The rule is amended to streamline language, update citations, and remove the definition for "reasonable possibility" that is proposed in this package to be moved to OAC 3745-31-01. OAC 3745-31-11 specifies allowable increments in ambient air pollution concentration depending on the type of pollutant and area classification. The rule is amended to streamline language and update a citation. OAC 3745-31-12 requires the owner or operator of a proposed major stationary source or major modification to submit certain data necessary to perform analyses and make determinations. The rule is amended to update citations. OAC 3745-31-13 specifies provisions with respect to construction, regulated NSR pollutants, and ambient monitoring that apply to major stationary sources or major modifications located in designated attainment areas. The rule is amended to streamline language and update a citation. OAC 3745-31-14 provides for the pre-application analysis for criteria and non-criteria air pollutants as well as the ambient monitoring that an owner or operator of a major stationary source or major modification in an attainment area may conduct for the pre-application analysis, post-approval, or post-construction periods as determined by the Director. The rule is amended to update a citation.

OAC 3745-31-15 requires the owner or operator of a major stationary source or major modification in an attainment area to apply best available control technology. The rule is amended to update a citation. OAC 3745-31-16 requires the owner or operator of a proposed major stationary source or major modification to demonstrate that resulting allowable emissions increases would not cause or contribute to air pollution in violation of any national ambient air quality standard or any applicable maximum allowable increase over the baseline concentration in any attainment area. The rule is amended to update a citation. OAC 3745-31-17 requires the owner or operator of a proposed major stationary source or major modification to provide both an analysis of the impairment to visibility, soils, and vegetation to be submitted with the PTI application and an analysis of the air quality impact projected for the attainment area as a result of general commercial, residential, industrial, and other growth associated with the stationary source or modification. The rule is amended to update a citation. OAC 3745-31-18 states that required estimates of ambient concentrations must be based upon applicable air quality models, databases, and other requirements as specified in federal code, although changes or substitutions may be made with the written approval of the administrator of the United States Environmental Protection Agency (USEPA). The rule is amended to update a citation. OAC 3745-31-19 contains notice requirements for the Director to the regional administrator of the USEPA regarding a permit application for a major stationary source or major modification in an attainment area, requires the Director to consider comments from impacted federal land managers concerning the impacts of such proposals, and allows an owner or operator of such proposals to seek a sulfur dioxide variance from the governor of Ohio and the president of the United States. The rule is amended to update a citation. OAC 3745-31-20 allows an owner or operator of a proposed major stationary source or major modification to be constructed in an attainment area to request that the Director approve a system of innovative control technology. The rule is amended to streamline language and update a citation. OAC 3745-31-21 specifies provisions with respect to construction, regulated NSR pollutants, and clean coal technology that apply to major stationary sources or major modifications located in designated nonattainment areas. The rule is amended to update a citation.

OAC 3745-31-22 states that the Director may approve a PTI application for a major stationary source or major modification in a nonattainment area if certain conditions are met. The rule is amended to streamline language and update a citation. OAC 3745-31-23 specifies provisions pertaining to major stationary sources or major modifications located in attainment or unclassified areas and whose emissions would cause or contribute to a violation of a national ambient air quality standard. The rule is amended to streamline language and update a citation. OAC 3745-31-24 specifies provisions regarding the baseline for determining credit for emission offsets for major stationary sources or major modifications in nonattainment areas. The rule is amended to streamline language and update a citation. OAC 3745-31-25 states that creditable emission reductions of regulated NSR pollutants must come from the same source or other sources in the same nonattainment area, although such reductions may be obtained in another nonattainment area if certain requirements are met. The rule

is amended to update a citation. OAC 3745-31-26 requires the ratio of total actual emissions reduced to emissions increased to be at least one to one in nonattainment areas, with certain alternative ratios provided. The rule is amended to update a citation. OAC 3745-31-27 specifies the procedures for an owner or operator of a proposed stationary source, the local community, or the State to propose emission offsets. The rule is amended to streamline language and update a citation. OAC 3745-31-28 provides for the requirements and exemptions for the construction or reconstruction of a major maximum achievable control technology source. The rule is amended to update a citation.

OAC 3745-31-29 provides for the development, application, processing, and termination of general PTI's and general PTIO's. The rule is amended to streamline language and update a citation. OAC 3745-31-30, a new rule, is comprised of content that is proposed to be moved from OAC 3745-31-03 and specifies general provisions for permits-by-rule (PBR's) for different types of facilities and air contaminant sources, exempts the relocation of a portable PBR, revises the PBR's for emergency generators, water pumps, air compressors driven by internal combustion engines, and nonmetallic mineral processing plants as well as the citations in the PBR for unpaved roadways and parking areas, and adds new PBR's for transloaders and petroleum solvent dry cleaners. OAC 3745-31-32 specifies provisions pertaining to plantwide applicability limits (PAL) for major stationary sources. The rule is amended to streamline language, update a citation, and list an exemption from BAT requirements for PAL's. OAC 3745-31-33 authorizes certain types of site preparation activities prior to the obtainment of a PTI or PTIO.

During early stakeholder outreach, the OEPA informed over 3,500 stakeholders via its electronic mailing list of an early comment period in addition to posting a notice on its website and publishing it in the Director's Weekly Review. Comments were provided by the American Petroleum Institute - Ohio, NiSource (on behalf of Columbia Gas of Ohio), and the local office of Porter, Wright, Morris & Arthur and were generally supportive of the proposed rule changes, although Porter, Wright, Morris & Arthur stated that a limit on welding rod consumption was unnecessary. The OEPA responded by saying that a limit is essential to assure that emission rates of pollutants remain below appropriate levels. During the CSI public comment period, comments were received from Enel X North America (Enel X), American Municipal Power, Inc. (AMP), Ohio Municipal Electric Association (OMEA), Trinity Consultants, PTT Global Chemical America (PTTGCA) LLC, the Columbus Department of Public Utilities (Columbus DPU), Marathon Pipe Line LLC, the USEPA, the Cleveland Department of Public Health (Cleveland DPH), and the OEPA's Office of Compliance Assistance and Pollution Prevention (OCAPP). Comments addressed issues including emergency engines, project emissions accounting, the potential to emit of an emergency source, appeal of a permit by a third party, the construction commencement window, the temporary flare exemption, qualification for exemptions, determination of limits for each facility category, ozone generators, transloaders, and gasoline dispensing facilities with State II controls.

Enel X requested that the OEPA allow emergency engines to participate in the PJM Emergency Load Response Program by modifying the existing PBR for emergency engines or creating a new PBR for emergency demand response. Trinity Consultants expressed similar concerns that the OEPA's rule changes would invalidate numerous PBR's in Ohio complying with the emergency demand response provision. Furthermore, AMP and OMEA requested that clarification be provided regarding the emergency generator and emergency engine provisions' alignment with federal rules. The OEPA responded stating that it allowed operators to continue to be covered under the PBR but would not allow them to operate in violation of federal rule, adding that it would start a separate rulemaking process for a new PBR for engines that are not emergency-only to address this issue. PTTGCA expressed support for the ability to extend a permit termination date in response to a third party appeal, although AMP and OMEA urged that extension options to the stay of eighteen months should be made available if a permit is appealed by a third party. The OEPA responded saying that an extension would be unnecessary as the permit only expires if construction has not begun. Columbus DPU asserted that it can be operationally challenging to start construction within eighteen months of a PTI's effective date and requested that the window be extended to thirty months. The OEPA responded by saying that the eighteen-month start rule comes from federal rules and therefore cannot be changed, although it did point out that a permit does not expire if an applicant enters into a binding contract before the eighteen months are up and that the rules allow an applicant to apply for and obtain a twelve-month extension on the permit. AMP and OMEA also asked for clarification on the time period to be used when calculating actual and potential emissions of temporary fuel-burning equipment exempt from the requirement to obtain a PTI or PTIO. The OEPA subsequently inserted language to clarify that the reference is to an hourly potential to emit. Columbus DPU suggested adding an exemption for temporary flares at municipal sewage sludge anaerobic digestion facilities. The OEPA decided not to do so as the current proposed exemption was evaluated for natural gas only. Columbus DPU proposed revising the provisions on reporting requirements for emergency engines of greater than 100 horsepower to specify the requirements in the federal rules. The OEPA did not make this change, saying that it tries to not repeat specific federal requirements in order to avoid having to change its rules when the federal rules change. Columbus DPU also requested clarification on the engine horsepower rating requirements, specifically adding the word "output" after "horsepower" because it was unclear whether "engine horsepower" was referring to an input or output rating. The OEPA adopted this change in multiple parts of the rule.

Marathon Pipe Line LLC suggested that butane and similar liquefied petroleum gases be added to natural gas as fuels qualifying for the exemption. The OEPA incorporated this change into the rules. The USEPA asked how limits were determined for each facility category qualifying for permit exemptions and what their potential emissions were. The OEPA provided the calculations, assumptions, and criteria used. The USEPA inquired as to whether there were other potential regulated emissions from ozone generators besides ozone that warrant the need for a PTI or PTIO. The OEPA stated that the exemption was simply meant to clarify for consultants, company contacts,

and permit writers that no permit is needed. The USEPA also asked how emissions from transloaders without fabric filtration were limited. The OEPA replied that the PBR is intended for transloaders that are using a baghouse only and adjusted the rule to reflect this. Cleveland DPH noted that the provisions concerning PBR's for gasoline dispensing facilities contained references to "Stage II controls" which were required to be decommissioned by January 1, 2017, and asserted that these PBR's would be unavailable until the language was corrected. The OEPA consequently made appropriate changes to the rule and paragraph title. OCAPP requested that permanent exemptions for small craft breweries and distilleries associated with restaurants. The OEPA accepted the change for craft breweries but not distilleries, saying that the latter is more complicated than the former but adding that it could be addressed in future rulemaking. Finally, the OEPA made several typographical and grammatical revisions upon inquiry from the CSI Office.

The business community impacted by the rules includes any facility which would intend to install a source of air pollution. The adverse impacts created by the rules include the costs associated with preparing an application for a PTI or PTIO (which the OEPA estimates can range from \$100 to \$30,000, depending on the size of the facility and the number of sources), the fee required by the ORC to obtain the installation permit portion of the PTI or PTIO (which varies depending on the type of facility and project and can range from \$50 to thousands of dollars according to the OEPA), the operational fees required by the ORC based on tons of annual emissions at the facility (which can range from \$50 to thousands of dollars according to the OEPA), and renewing a permit (which the OEPA states would likely cost substantially less than what it takes to initially obtain the permit). The OEPA states that the adverse impacts to business are justified to provide an efficient permitting program for new and modified sources of air pollution (as the OEPA notes that the issuance of permits takes three to five times longer under the alternative to these rules, which entails the USEPA operating the program), thereby fulfilling the federal requirement in the Clean Air Act to develop a plan for attaining and maintaining national ambient air quality standards.

Recommendations

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

Conclusion

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