



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Mandi Payton, Ohio Environmental Protection Agency

FROM: Michael Bender, Business Advocate

DATE: March 8, 2023

RE: **CSI Review – DAPC – Particulate Matter Regulations (OAC 3745-17-01, 3745-17-03, 3745-17-04, 3745-17-07, 3745-17-08, 3745-17-09, 3745-17-10, 3745-17-11, 3745-17-12, 3745-17-13, and 3745-17-14)**

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 eleven amended rules proposed by the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on January 20, 2023, and the public comment period was held open through February 21, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on January 20, 2023.

Ohio Administrative Code (OAC) 3745-17-01 specifies definitions and referenced materials pertaining to particulate matter. The rule is amended to revise the rule title and update language, citations, dates, and typography. OAC 3745-17-03 sets forth the test methods and procedures to be used for determining particulate emissions and calculating opacity values from various air contaminant sources. The rule is amended to update language and citations. OAC 3745-17-04 outlines the certification and permit application requirements as well as the compliance time schedules for the owners or operators of air contaminant sources that are subject to certain provisions in OAC 3745-17. The rule is amended to update citations and remove references to the Conesville Power Plant. OAC 3745-17-07 sets forth visible particulate emission limitations from stationary

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sources. The rule is amended to update citations and correct a facility name. OAC 3745-17-08 prohibits, with certain exemptions, the operation of fugitive dust sources without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne. The rule is amended to update citations and replace instances of “Mingo Junction Steel Works LLC” with “JSW Steel USA Ohio.” An appendix to the rule titled “Areas of the State of Ohio Where Paragraphs (B) and (D) of Rule 3745-17-08 of the Administrative Code are Applicable” is also provided. OAC 3745-17-09 specifies the maximum particulate emission limitations for incinerators. The rule is amended to update language.

OAC 3745-17-10 specifies the maximum particulate emission limitations for fuel burning equipment. The rule is amended to update language and citations and to remove references to the Conesville Power Plant. An appendix to the rule which contains a figure depicting allowable emission rates is also provided. OAC 3745-17-11 specifies the maximum particulate emission limitations for industrial operations, processes, or activities. The rule is amended to update language and to replace instances of “ArcelorMittal Cleveland LLC” with “Cleveland-Cliffs Cleveland Works LLC.” An appendix to the rule which contains a table and a figure depicting allowable emission rates is also provided. OAC 3745-17-12 sets forth requirements pertaining to particulate emissions from air contaminant sources for certain facilities in Cuyahoga County. The rule is amended to update language and citations, remove references to closed facilities, and update facility names. OAC 3745-17-13 sets forth requirements pertaining to particulate emissions from air contaminant sources for certain facilities in Jefferson County. The rule is amended to update language and a citation, replace instances of “Mingo Junction Steel Works LLC” with “JSW Steel USA Ohio,” and remove requirements for JSW Steel USA Ohio with respect to hot metal transfer operations from railcar to charge ladle, basic oxygen furnaces, and desulfurization stations. An appendix to the rule which contains the work practice plan for the facility located in Mingo Junction is also provided and is revised to update language, clarify the effective date for the implementation of certain dust control measures, remove an unnecessary figure, and replace instances of “Mingo Junction Steel Works LLC” with “JSW Steel USA Ohio” including in the appendix title so that it now reads “Work Practice Plan for the Control of Fugitive Dust Emissions from Roadways and Parking Areas at the JSW Steel USA Ohio, Mingo Junction (South) Facility.” OAC 3745-17-14 requires the owner or operator of specified facilities in Cuyahoga and Jefferson counties to submit to the OEPA approvable control strategies and compliance schedules that contain certain information and accomplish particular objectives regarding the reduction of particulate emissions. The rule is amended to update language and a citation and to remove a reference to United Ready Mix.

During early stakeholder outreach, the OEPA established a 30-day stakeholder outreach period that ended on April 12, 2022. The OEPA Division of Air Pollution Control (DAPC) electronically sent out notice of the request for comments to over 2,500 members of the OEPA’s electronic interested parties list for DAPC rulemaking. The DAPC also posted the notice online. Comments were

submitted by the Columbus Department of Public Utilities and JSW Steel USA. The Columbus Department of Public Utilities requested that the rules and corresponding appendix clarify the boundaries of the city of Columbus to reflect them as they are currently, including the portions of the city in Delaware and Licking counties. The OEPA understood this request but stated that, statutorily, it may only adopt and modify rules prescribing fugitive dust limitations and standards that are related on an area-wide basis to attainment and maintenance of ambient air quality standards. Since Franklin County is currently in attainment, the OEPA could not add additional areas of the city of Columbus to the rules and corresponding appendix. JSW Steel USA stated that only two of the five previous requirements specific to Mingo Junction Steel Works LLC were applicable to its current site configuration. The OEPA updated the rules accordingly. JSW Steel USA added that the remaining two requirements and the corresponding work practice plan were outdated and overly burdensome and proposed some suggestions to update the rules and work practice plan. The OEPA believed that JSW Steel Ohio had a valid argument but asserted that it was unable to make the requested changes due to time constraints of the rulemaking process. However, the OEPA stated that it would address this comment in upcoming rulemaking. During the CSI public comment period, the OEPA received one comment from the Ashtabula City Health Department in support of the proposed changes. The OEPA did make some technical changes to the rules.

The business community impacted by the rules includes facilities which contain air contaminant sources that emit particulate matter. The adverse impacts created by the rules include limitations on visible particulate emissions, following specified test methods and procedures, implementing control strategies, following compliance schedules, obtaining certification or a permit, recordkeeping, and submitting data and information to the OEPA. According to the OEPA, the costs of compliance can range from a few hundred dollars for control technology to a few million dollars for the installation and operation of a mechanical control device. The OEPA notes that all of the entities required to incur the cost of compliance did so years ago, adding that the rules are often less stringent than federal programs that regulate particulate matter emissions. The OEPA states that the adverse impacts to business are justified to fulfill federal requirements under the Clean Air Act to control particulate emissions as part of the effort to attain and maintain 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.