

**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: February 6, 2023

RE: **CSI Review – Acid Rain Permits and Compliance (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 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 twenty-four amended rules and thirty-five no-change 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 December 14, 2022, and the public comment period was held open through January 17, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 14, 2022.

Ohio Administrative Code (OAC) 3745-103-01 specifies definitions and referenced materials related to acid rain permits and compliance. The rule is amended to update language. OAC 3745-103-02 specifies the affected units and affected sources that are subject to the requirements of the Acid Rain Program (ARP). The rule is amended to update language. OAC 3745-103-03 outlines an exemption from the ARP, with the exception of certain statutory provisions, for new utility units under specific criteria. The rule is amended to update language. OAC 3745-103-04 outlines an exemption from the ARP, with the exception of certain statutory provisions and federal regulatory provisions, for permanently retired units under specific criteria. The rule is amended to update language. OAC 3745-

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103-05 sets forth requirements for designated representatives of each affected source and each affected unit as they pertain to acid rain permits, monitoring, sulfur dioxide emissions, nitrogen oxide requirements, excess emissions, recordkeeping and reporting, liability, and effects on other authorities. The rule is amended to update language. OAC 374-103-06 provides for submissions under the ARP by designated representatives for the sources on behalf of which the submissions are made. The rule is amended to correct a citation error. OAC 3745-103-07 provides for acid rain permit applications. The rule is amended to update language. OAC 3745-103-08 sets forth the binding effect of an acid rain permit application on the owners, operators, and designated representative of the affected source and affected units in question. OAC 3745-103-09 authorizes an acid rain compliance plan to include a plan for a compliance option under certain conditions.

OAC 3745-103-11 sets forth the contents of an acid rain permit. OAC 3745-103-12 states that each affected unit that is operated in accordance with the acid rain permit and was issued in conjunction with Title IV of the Clean Air Act (CAA) as provided for in certain OAC and federal regulatory provisions is deemed to be in compliance with the ARP, with one specified exception. OAC 3745-103-13 provides for the responsibility of the OEPA to administer and enforce acid rain permits. OAC 3745-103-14 authorizes the United States Environmental Protection Agency (USEPA) to intervene in any administrative appeal of an acid rain permit or denial of such permit and outlines the requirements that are not stayed as a result of an administrative appeal concerning an acid rain requirement. OAC 3745-103-15 provides for revisions to an acid rain permit or the acid rain portion of an operating permit. The rule is amended to update language. OAC 3745-103-16 describes which permit revisions qualify as permit modifications and the requirements that must be followed accordingly. OAC 3745-103-17 describes which permit revisions qualify as fast-track modifications and the requirements that must be followed accordingly. OAC 3745-103-18 describes which permit revisions qualify as administrative amendments and the process for the issuance of such amendments. OAC 3745-103-19 describes which permit revisions qualify as automatic permit amendments. OAC 3745-103-20 authorizes the Director of the OEPA (Director) to reopen an acid rain permit for cause under certain conditions. The rule is amended to update language. OAC 3745-103-21 sets forth requirements for designated representatives of existing units regarding approved repowering extension plans. OAC 3745-103-22 provides for the regulation of combustion or process sources. OAC 3745-103-23 authorizes combustion or process sources that are not affected units and that operate and are located in Ohio to submit an opt-in permit application to become opt-in sources upon issuance of an opt-in permit. OAC 3745-103-24 describes the applicability of certain rules and regulations for opt-in sources with respect to the ARP. The rule is amended to remove unnecessary language. OAC 3745-103-25 states that OAC 3745-103-06 applies to designated representatives of opt-in sources. The rule is amended to remove unnecessary language. OAC 3745-103-26 outlines the responsibility of the USEPA and the Director. OAC 3745-103-27 sets forth the contents of an opt-in permit which is to be included in the acid rain permit. The rule is amended to remove unnecessary language.

OAC 3745-103-28 describes the opt-in permit process. The rule is amended to update language and correct an error. OAC 3745-103-29 specifies the opt-in application requirements for combustion sources. OAC 3745-103-31 provides for the process and conditions by which an opt-in source may withdraw from the ARP. The rule is amended to update language. OAC 3745-103-32 provides for the revision and renewal of an opt-in permit. The rule is amended to update language. OAC 3745-103-33 requires the designated representative of a combustion source to submit baseline data or, if applicable, alternative baseline data. The rule is amended to update language. OAC 3745-103-34 provides for the sulfur dioxide emissions rate calculations to be used by the designated representative of a combustion source when submitting data. The rule is amended to update language. OAC 3745-103-35 requires the designated representative of a combustion source to submit certain data using specified calculations with respect to the allowable sulfur dioxide emissions rate and provides for the calculation of the 1985 allowable sulfur dioxide emissions rate. The rule is amended to update language. OAC 3745-103-36 requires the designated representative to submit certain data with respect to the current allowable sulfur dioxide emissions rate of the combustion source. OAC 3745-103-37 requires the designated representative to submit certain data with respect to the current promulgated sulfur dioxide emissions limit of the combustion source. OAC 3745-103-38 specifies the formulas to be used by the USEPA for calculating the annual allowance allocation for a combustion source. OAC 3745-103-39 provides for the proration of the allowance allocation by the USEPA for combustion sources whose opt-in permits become effective on a date other than January 1st. The rule is amended to update language. OAC 3745-103-41 provides for the establishment of compliance accounts by the USEPA for opt-in sources. OAC 3745-103-42 requires allowances allocated to an opt-in source to be assigned a serial number that identifies the allowances as being allocated under an opt-in permit. OAC 3745-103-43 provides for the recordation of transfer requests by the USEPA of an opt-in allowance that is allocated to an opt-in source.

OAC 3745-103-44 requires the designated representative of an opt-in source to submit to the USEPA each calendar year an annual compliance certification report for the opt-in source and provides for the contents of the report. OAC 3745-103-45 provides for the determination of an opt-in source's reduced utilization and the calculation of allowances deducted for reduce utilization, in addition to requiring the designated representative of an opt-in source to annually submit an opt-in utilization report as part of the annual compliance certification report and to also submit a confirmation report for estimates of any reduction in heat input resulting from improved efficiency. The rule is amended to update language and provide clarification. OAC 3745-103-47 requires the designated representative of an opt-in source to notify the OEPA and USEPA of an opt-in source's permanent shutdown, reconstruction, or change in affected status and provides for the subsequent actions to be taken by the USEPA. OAC 3745-103-48 requires the designated representative of an opt-in source to submit a thermal energy plan when seeking to qualify for the transfer of allowances based on the replacement of thermal energy by a replacement unit, provides for the calculation of transferable

allowances, and requires the designated representative to annually submit an opt-in utilization report as part of the annual compliance certification report for the opt-in source covered by a thermal energy plan. The rule is amended to update language and provide clarification. OAC 3745-103-50 specifies the formula to be used for the calculation of allowance deductions. OAC 3745-103-51 provides for the deduction of allowances by the USEPA. OAC 3745-103-52 sets forth the monitoring requirements for combustion sources and opt-in sources. OAC 3745-103-53 requires the designated representative of a combustion source to submit a monitoring plan to the USEPA as part of the opt-in permit application.

OAC 3745-103-55 describes the applicability of certain rules and regulations for coal-fired utility units with respect to nitrogen oxide emission limitations. OAC 3745-103-56 describes the applicability of certain ARP rules and regulations relative to the rules regarding nitrogen oxide emission limitations. The rule is amended to remove unnecessary language. OAC 3745-103-57 sets forth the nitrogen oxide emission limitations for group one, phase I boilers. OAC 3745-103-58 sets forth the nitrogen oxide emission limitations for group two boilers. OAC 3745-103-59 sets forth the nitrogen oxide emission limitations for group one, phase II boilers. OAC 3745-103-60 describes how an owner or operator of a group one, phase II boilers may submit an early election plan to be subject to nitrogen oxide emission limitations for group one, phase I boilers. The rule is amended to update language. OAC 3745-103-61 requires the designated representative of a phase I or II unit with a group one or two boiler subject to nitrogen oxide emission limitations to submit a complete acid rain permit application, including a complete compliance plan for nitrogen oxide emissions. OAC 3745-103-62 allows the designated representative of an affected unit that is not an early election unit and cannot meet its applicable nitrogen oxide emission limitation to petition the permitting authority for an alternative emission limitation that is less stringent than the applicable emission limitation and outlines the process for accomplishing this. The rule is amended to update language, provide clarification, and remove unnecessary language. OAC 3745-103-63 allows the designated representative of multiple affected units subject to nitrogen emission limitations to comply via an averaging plan and provides for the submission of such a plan. OAC 3745-103-65 specifies the information that must be included in petitions for an alternative emission limitation demonstration and for an alternative emission limitation. OAC 3745-103-66 sets forth the test methods and procedures to be used as the basis for the report, submitted as part of a petition for a final alternative emission limitation, which demonstrates that an affected unit to meet applicable nitrogen oxide emission limitations.

During early stakeholder outreach, the OEPA Division of Air Pollution Control (DAPC) notified stakeholders of a 30-day outreach period ending August 20, 2021, where they could submit comments on the proposed rules. Notice was sent to over 3,500 members of the OEPA's electric Interested Parties list for DAPC rulemaking. The DAPC also posted the notice online and in the Director's Weekly Review publication. The OEPA did not receive any comments during this stakeholder

outreach period. No comments were received during the CSI public comment period.

The business community impacted by the rules includes facilities that operate fossil-fuel fired electrical generating units that emit sulfur dioxide and nitrogen oxides. The adverse impacts created by the rules include permit requirements, following application procedures, and emission limitations. The OEPA notes that the revisions to the rules do not result in new costs and that facilities already have controls in place under the terms of their acid rain permits. The OEPA states that the adverse impacts to business are justified to implement the ARP as required by the CAA, attain and maintain National Ambient Air Quality Standards, and protect public health and welfare.

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.