



# Common Sense Initiative

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

Joseph Baker, *Director*

## MEMORANDUM

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

**FROM:** Caleb White, Business Advocate

**DATE:** April 24, 2024

**RE:** **CSI Review – Cleveland Area Reclassification to Serious Ozone Nonattainment (OAC 3745-21-01, 3745-21-04, 3745-21-09, 3745-21-11, 3745-21-12, 3745-21-14, 3745-21-16, 3745-21-21, 3745-21-22, 3745-21-24, 3745-21-25, 3745-21-26, 3745-21-27, 3745-21-28, 3745-31-01, 3745-31-21, 3745-110-02, 3745-110-03, and 3745-110-04)**

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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 nineteen amended rules proposed by the Ohio Environmental Protection Agency (OEPA). This rule package was submitted to the CSI Office on February 2, 2024, and the public comment period was held open through March 5, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 2, 2024.

The rules in this package are largely being amended to reclassify the current Cleveland nonattainment area (Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit counties) from the current moderate nonattainment for the United States Environmental Protection Agency's (US EPA) 2015 National Ambient Air Quality Standards (NAAQS) for ozone pollution. These rules would reclassify the Cleveland nonattainment area from moderate nonattainment to serious ozone nonattainment in accordance with federal requirements. The Cleveland nonattainment area is required to meet the 2015

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NAAQS by August 3, 2024, however due to recent data collected, the OEPA notes the Cleveland nonattainment area will fail to meet the ozone standard by the required date and thus be reclassified by the US EPA as serious nonattainment under the federal Clean Air Act (CAA). This reclassification by US EPA implements additional requirements under the CAA for major stationary sources located in the Cleveland nonattainment area.

Ohio Administrative Code (OAC) Chapter 3745-21 contains requirements and standards for carbon monoxide (CO), ozone, hydrocarbon, and related emissions. The rules in this package located in OAC 3745-21 establish the definitions for the chapter, incorporate materials by reference, establish rule requirement compliance timelines, requirements for VOC (volatile organic compounds) Reasonably Available Control Technology (RACT) studies for non-Control Techniques Guidelines (CTG) sources, establish requirements surrounding VOCs and CO for dry cleaning facilities, bakery oven facilities, facilities that use process vents in batch operations, facilities that generate industrial wastewater emissions, facilities that store VOC liquids, facilities that use offset lithographic printing processes, facilities that make flat wood paneling coatings, facilities that have reinforced plastic composites production operations, facilities that have miscellaneous metal or plastic parts coating operations, boat manufacturers, and facilities that have miscellaneous industrial adhesive and sealant application processes. Among other changes these rules are amended to add a definition and references for “source specific RACT,” remove and adopt by reference the list of compounds not classified as VOCs, clarify the definitions of “flat wood paneling” and “flat wood stock,” require emission tests to be conducted within the five years prior to the compliance date unless a prior test is allowed by the OEPA, require certain equivalent limitations to be issued in a permit-to-install (PTI) or a permit-to-install and operate (PTIO) rather than a permit-to-operate, rescind a source-specific VOC RACT, remove requirements for sources that are permanently shut down, allow source-specific RACT exemptions, as well as to update applicability, compliance, and effective dates. One of the more substantive ways these rules are amended expands the requirements for non-CTG VOC RACT for facilities located in the Cleveland nonattainment area with a potential to emit (PTE) of VOC or nitrogen oxides (NO<sub>x</sub>) between fifty and one hundred tons per year (TPY) and lower the source threshold for sources subject to VOC and NO<sub>x</sub> RACT requirements from a PTE of 100 TPY to 50 TPY. Among these more substantive changes, these rules are amended to correct and update references, as well as to reformat, update, and streamline language.

OAC Chapter 3745-31 establishes the requirements for the installation, modification, and operation of new and existing sources of air contaminants and requires new and modified sources to obtain a PTI or PTIO. OAC 3735-31-01 and 3745-31-21 establish the definitions used in the chapter and establish requirements, applicability, and exemptions for major stationary sources and modifications located in a nonattainment area. These rules are amended to clarify that the two-step netting process outlined in the definition of “major modification” is not applicable to areas designated serious nonattainment or above and establish a definition and netting process for major modifications in

serious, severe, and extreme nonattainment areas, add flexibility for both smaller emission sources not previously subject to nonattainment new source review requirements (NNSR) and larger sources regarding what constitutes a major modification, and update the definition “significant,” and to add language to applicability of the air pollutants covered by the rules and anti-backsliding requirements to ensure consistency with federal law. Among the more significant amendments to these rules includes lowering the major source threshold from 100 TPY of VOC s or NO<sub>x</sub> to 50 TPY and the major modification significance level from 40 TPY of VOC s or NO<sub>x</sub> to 25 TPY in addition to other requirements. In addition to these more substantial changes, these rules are also amended to update references and streamline language.

OAC Chapter 3745-110 establishes requirements for stationary sources of NO<sub>x</sub> located at a facility that emits or has a PTE more than one hundred TPY of NO<sub>x</sub> emissions. Stationary sources under these rules include very large boilers, large boilers, mid-size boilers, small boilers, stationary combustion turbines, stationary internal combustion engines, and reheat furnaces. OAC 3745-110-02, 3745-110-03, and 3745-110-04 establish the applicability of this chapter’s requirements, the RACT requirements and limitations for NO<sub>x</sub> emissions from stationary sources, and the compliance deadlines for requirements in this chapter. These rules are amended to lower the facilities subject to RACT requirements of facilities in the Cleveland nonattainment area from 100 TPY of NO<sub>x</sub> emissions to 50 TPY of NO<sub>x</sub> emissions, to limit an exemption related to the consideration of best available technology as a part of a RACT study to within five years prior to the submission of the study, lower the exemption thresholds for NO<sub>x</sub> emission sources in the Cleveland nonattainment from 25 TPY to 10 TPY, require restrictions to be issued in PTI or PTIO rather than a permit to operate, require sources exempt from the chapter to certify in writing and submit documentation showing they qualify for an exemption, as well as to update dates. In addition to these more substantive changes, these rules are also amended to update clarify and streamline language.

During early stakeholder outreach, the OEPA sent notice to the over 3,000 members of the OEPA Division of Air Pollution Control’s (DAPC) electronic interested parties list used for rulemaking requesting comments, posted a notice on the DAPC’s website, and published a notice in the Director’s Weekly Review publication. During this period the OEPA received one comment from the Ohio Manufacturers’ Association (OMA) requesting for the OEPA to include them in any future discussions surrounding these rules. The OEPA responded by committing to include the OMA in any discussions regarding or related to the rules in this package.

During the CSI public comment period, the OEPA received four comments. The first comment came from the US EPA with a clarification on the intent of certain requirements in the rules and recommendations for language changes to ensure consistency. The OEPA responded by making the requested changes. The second comment came from the University of Akron which suggested changes to the rules to make the requirements in OAC Chapter 3745-110 applicable only to new

sources, to increase the threshold for NO<sub>x</sub> emissions proposed in the amendments from 10 TPY to 20 or 15 TPY, and for facilities that use more than one boiler to have exemptions for all of their boilers for a facility limit equivalent to 10 TPY per boiler rather than individual boilers. The OEPA did not make changes in response to this comment as the suggested changes would lead to unequal applications of the rules, the lowering of exemption thresholds is necessary to reduce ozone concentrations in the Cleveland ozone nonattainment area, and in the case of facility exemptions for boilers, the facility can take a facility-wide restriction to maintain a PTE level below 50 TPY. The third comment came from Carmeuse Lime and Stone which asked for an exemption for the RACT requirements outlined in OAC Chapter 3745-110 regarding the timelines for RACT studies for units that have conducted a RACT study under the current rule citing concerns that they would need to submit a new RACT despite having recently submitted a RACT study for their facility. The OEPA did not make any changes in response to this rule as under the proposed rule this facility would already not need to submit a new RACT study. The fourth comment came from the OMA who requested the applicability of the requirements associated with the reclassification the Cleveland nonattainment area to serious nonattainment to be conditioned upon the federal reclassification of this nonattainment area going into effect, for the changes to the timeline for the exemption related to the consideration of best available technology as a part of a RACT study to be rewritten to ensure the timeline for the submission of the best available technology is not shortened to four years, for certain provisions be rewritten to more closely align with the CAA, and for the burden of proof an emitter is required to show to gain an exemption for RACT requirements and NO<sub>x</sub> emissions limitations to be clarified. The OEPA did not make any changes to the rules in response to this comment as they would reevaluate the changes in these rules if the Cleveland nonattainment area were to meet their standards in the future, clarified that the revised timeline language surrounding RACT studies is not intended to shorten the timeframe but to update the language to be in line with contemporary RACTs, that the requested changes would provide less clarity to the language, and clarified what burden of proof is required for RACT exemptions.

The business community impacted by the rules includes stationary facilities that emit VOCs and CO, any facility intending to install a source of air pollution, and facilities located in Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, or Warren County, and new or modified units statewide that contain stationary sources with a PTE of more than either 100 TPY of NO<sub>x</sub> or 50 TPY for facilities in the Cleveland nonattainment zone. The adverse impacts created by the rules include the potential costs associated with limiting and monitoring emissions which can range from no financial cost for a change in work practice or raw material to the cost of a few million dollars for the installation and operation of a mechanical control device, the costs associated with obtaining a PTI or PTIO which can range from \$100 to around \$30,000, potential requirements to install emissions control equipment which can range from \$500,000 to \$2 million, reporting requirements, limitations on emissions, and the costs associated with RACT studies which can range from \$5,000 to \$30,000. The CSI Office notes that while the

adverse impacts to business contained in these rules are very significant, OEPA does not have discretion to eliminate these adverse impacts due to constraints in federal law and regulation. The OEPA states that the adverse impacts to business are necessary to comply with the National Ambient Air Quality Standards required under the Clean Air Act and to reduce air pollution in the state in accordance 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 the OEPA should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.