



Division of Air Pollution Control

Response to Comments

Rule: OAC Rules 3745-14-01 and 3745-14-03, NOx Budget Trading Program

Agency Contact for this Package

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Ohio EPA held a public hearing on Thursday, February 12, 2015 in Columbus, Ohio and also held a 30-day public comment period ending on February 12, 2015 on proposed amendments to Ohio Administrative Code (OAC) rules 3745-14-01 and 3745-14-03. This document summarizes the comments and questions received at the public hearing and during the associated comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in

General/Overall Concerns

Comment 1: The Utilities recommend that Ohio EPA rescind these rules for Electrical Generating Units ("EGUs") because these rules are no longer necessary for these regulated units. Ohio EPA can keep the rules for non-EGUs for purposes of modeling for Ozone; however, the applicability requirements should no longer apply to EGUs. The Utilities currently are regulated by the CSAPR FIP, which has much more stringent emission reductions than the NOx Trading Budget. Further, Ohio EPA has regulations for CAIR, Ohio Adm. Code 3745-109, that provide "fallback" emission reductions should there be uncertainty with CSAPR. Ohio EPA acknowledges that these rules are duplicative of the subsequent adoption of CAIR and CSAPR. Response to Comments, October 17, 2014. Ohio EPA also acknowledges that the NOx Budget Trading Rules are inactive at this time. Id. Thus, the NOx Budget Trading Rules are not necessary as "fallback" rules.

In the alternative, if Ohio EPA is unwilling to rescind the rules as they apply to EGUs, then Ohio EPA must update the exemption under Ohio Adm. Code 3745-14-01(C)(2)(a). This section is out-of-date regarding the Supreme Court decision and the recent D.C. Circuit decision granting U.S.

EPA's motion to lift the stay on CSAPR. This exemption should reflect that the Utilities are currently regulated under CSAPR and the Ohio CAIR program is a fallback program to ensure reductions in interstate air pollution.

(Cheri A. Budzynski, Shumaker, Loop & Kendrick on behalf of the Ohio Utilities Group)

Response 1: Ohio EPA agrees EGUs are still regulated under CSAPR and states should be able to take credit for the significant reductions under that program as part of their redesignations and other state implementation plan processes. However, Ohio EPA is currently receiving conflicting information from U.S. EPA regarding what U.S. EPA may consider permanent and enforceable. In order to move forward with the 5-year review, Ohio EPA will not be rescinding these rules at this time. As you noted, the CSAPR rules are more stringent and therefore, there is no compliance impact with respect to the less stringent rule. Ohio EPA is currently working with U.S. EPA on the best method for addressing the issues between EGUs and non-EGUs and the various applicabilities under the different programs while ensuring Ohio can take credit for the important reductions gained under these various programs. We anticipate re-opening these rules prior to the next 5-year review to make the appropriate adjustments and rescissions once those discussions are completed with U.S. EPA and the appropriate outreach with stakeholders occurs.

Ohio EPA is also not prepared to make adjustments to 3745-14-01(C)(2)(a) until further discussions with U.S. EPA are completed for addressing the issues between EGUs and non-EGUs and the various applicability's under the different programs. U.S. EPA has instructed states that they should not to alter their regulatory requirements under these programs, and the CAIR regulations not subject to this proposal, until the final CAIR true-up is completed in the spring and U.S. EPA provides the appropriate guidance for addressing CSAPR in permits. Ohio EPA analyzed the language under (C)(2)(a) and found that it still protects EGUs from the requirements to implement the NOx SIP call rules. Specifically, the sentence highlighted below ensures these rules will not be implemented even though CAIR is no longer implemented and CSAPR is implemented. U.S. EPA will not be carrying out the functions of the NOx SIP call program.

“Should the United States environmental protection agency eliminate or suspend the CAIR program, units under paragraph (C)(1) of this rule or units under paragraph (A) of rule 3745-14-09 of the

Administrative Code would need to meet the requirements of this chapter following the elimination or suspension of the federal CAIR program, provided that 40 CFR 51.121(r) no longer applies and the Administrator will carry out the functions set forth for the administrator in this chapter.”

End of Response to Comments