

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-31, "Permits to install new sources", Package #2

Rule Number(s): OAC Rules 3745-31-01, 3745-31-03, 3745-31-05,
3745-31-06, 3745-31-11, 3745-31-13, 3745-31-14,
and 3745-31-33

Date: October 1, 2014

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules in OAC chapter 3745-31 require that all new and modified sources of air pollution apply for and obtain a permit-to-install (PTI) or a permit-to-install and operate (PTIO) before beginning installation and commencing operations. These permits identify the applicable air pollution control rules and regulations under which the source must operate and establish monitoring, record keeping, testing and reporting requirements by which the sources can demonstrate compliance with the rules and regulations.

These regulations are being modified to incorporate a new air pollutant type, particulate matter less than 2.5 micron in diameter (PM2.5), into the rules. The PM2.5 changes are essentially identical to language required by U.S. EPA. These rules are being modified to add and update multiple exemptions. These exemptions exempt insignificant sources from the need to obtain air permits. These rules are adding and updating multiple permit-by-rules for small sources including a new permit-by-rule for horizontal gas and natural gas liquids wells.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule Number	Authorizing Statute	Proposed Action
3745-31-01	3704.03(F), 3704.03(G)	Amended
3745-31-03	3704.03(F), 3704.03(G)	Amended
3745-31-05	3704.03(F), 3704.03(G), 3704.03(T)	Amended
3745-31-06	3704.03(F), 3704.03(G)	Amended
3745-31-11	3704.03(F), 3704.03(G)	Amended
3745-31-13	3704.03(F), 3704.03(G)	Amended
3745-31-14	3704.03(F), 3704.03(G)	Amended
3745-31-33	3704.03(F), 3704.03(G)	Amended

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

Section 110 of the Clean Air Act (CAA) requires all states to develop a plan for attaining and maintaining the national ambient air quality standards (NAAQS). The rules in OAC chapter 3745-31 establish Ohio's New Source Review (NSR) permitting program as required by the CAA and the Code of Federal Regulations (CFR) Title 40, Chapter 52.21 to ensure that all

new and modified sources of pollution are issued an air pollution permit. The rules in this chapter are a part of Ohio's state implementation plan (SIP) under Section 110 of the CAA.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The changes to these rules associated with the PM2.5 provisions, the new or revised exemptions, the Best Available Technology, and the permit-by-rule changes do not exceed the federal requirements with the possible exception of the permit-by-rule (PBR) for horizontal well completion operations. See OAC paragraph 3745-31-03(B)(2)(m).

The permit-by-rule for horizontal well completion operation requirements is equivalent to the federal New Source Performance Standard (NSPS), Subpart OOOO, "Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution" for *natural gas* wells as defined in NSPS, Subpart OOOO. However, the PBR requires NSPS equivalent requirements for wells that include both natural gas and natural gas liquids. Applying these requirements for wells that include natural gas liquids may go beyond the current federal requirements. The wells with natural gas liquids were included in the PBR for several reasons including: (1) when a well is producing both gas and natural gas liquids, it is unclear from the NSPS if the well counts as a natural gas well. By requiring equivalent to NSPS requirements for all wells, operators will clearly know their compliance obligations; (2) when wells are first drilled and the completion activities covered by the PBR are conducted, it is not known if the well will produce just natural gas, just natural gas liquids or some combination of the two. If the well produces just natural gas and the operator was not following the requirements of the NSPS, then they would immediately be in violation of the NSPS. Having the operator following the NSPS requirements each time a horizontal well completion is conducted will eliminate this instantaneous violation; and (3) Following the NSPS OOOO requirements for wells that include natural gas liquids will result in the recovery of saleable natural gas and natural gas liquids to the financial benefit of the operator, and also ensure compliance with the NSPS plus reduce emissions to the environment.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules in OAC Chapter 3745-31 implement the federal New Source Review (NSR) requirements under the CAA to verify that all new and modified sources of air pollution obtain permits and meet all applicable air pollution control rules and regulations.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules in OAC chapter 3745-31 require that all new and modified sources of air pollution apply for and obtain a permit-to-install (PTI) or a permit-to-install and operate (PTIO) before

beginning installation and commencing operations. These permits identify the applicable air pollution control rules and regulations under which the source must operate and establishes monitoring, record keeping, testing and reporting requirements by which the sources can demonstrate compliance with the rules and regulations. Ohio EPA considers the rules a success when a source is issued a permit and can, thereby, commence operations in compliance with the applicable air pollution rules and regulations.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio EPA established an initial 30-day public comment period ending June 26, 2009. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,248+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Ohio EPA received several comments from stakeholders during the initial comment period and made changes where appropriate. A "Synopsis of changes" document has been prepared and is being distributed with the interested parties draft to outline to potential commenters what changes have been made to the rules. Upon the close of the interested parties draft comment period, Ohio EPA will consider any additional comments and prepare a "response to comments" document detailing Ohio EPA's response to the comments and outlining any changes made to the draft language as a result of the comments.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rules in OAC chapter 3745-31 are not based on scientific data. The rules establish an administrative program through which air pollution control permits-to-install (PTI) and permits-to-install and operate (PTIO) are prepared and issued to air pollution sources.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

There are no alternatives available to Ohio's permitting program. The rules in OAC chapter

3745-31 establish Ohio's Permitting Program based on federal requirements. The only alternative is to allow the U.S. EPA to operate the program. Allowing U.S. EPA to administer the program would not be in the best interest of facilities in the state of Ohio.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The rules in OAC chapter 3745-31 establish an administrative program through which air pollution control permit-to-install (PTI) and permits-to-install and operate (PTIO) are prepared and issued to air pollution sources. The process is dictated through federal requirements and there are very few, if any, ways by which this program can deviate. Ohio EPA does not feel it would be possible to operate this program efficiently and effectively as a performance-based program.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Ohio EPA is the only agency having jurisdiction over the control of air pollution, and is specifically directed, under ORC 3704.03(F) to issue air pollution control permits. The rules in this chapter are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio EPA's air pollution permitting program was originally implemented in 1974 and the rules in OAC Chapter 3745-31 have existed since that time. The amendments to the rules in this rulemaking will be implemented, once the amended rules become effective, through inclusion of the requirements in permits.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**
- a. Identify the scope of the impacted business community;**
 - b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
 - c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Collectively, the rules in this chapter contain the requirements that a permit-to-install (PTI) or permit-to-install and operate (PTIO) must be obtained prior to installing a source of air pollution, the requirements for completing the permit application, and the requirements for the contents and issuance of the permit.

The impacted business community for the rules in this chapter is any facility intending to install a source of air pollution. This can range from small facilities (e.g. dry cleaners, gasoline dispensing facilities) to large manufacturing plants (e.g. power plants, automobile assembly facilities).

It is very difficult to estimate in dollars the cost of compliance with obtaining a PTI or PTIO. A facility needs to prepare an application first. Applications may be prepared and submitted by staff on-site or a facility may hire a consultant to prepare and submit their application. This often depends on the size of the facility, type of facility, and how complicated the project is for which a PTI or PTIO is needed. A facility may request a PTIO for one new source (emissions unit (EU)) or numerous EUs. Depending on the applicable rules, the requirements can be very simple (e.g., minor new source review (NSR)) to very complicated (e.g., major NSR that requires modeling). An application may take a facility a few hours to prepare and comprise thirty pages or it could take months to prepare and contain hundreds of pages of documents. Therefore, the cost can vary across a wide range being as little as \$100 to \$30,000 (typical estimated cost to have a larger project application completed by a consulting firm).

When an application permit is issued final, a fee is also paid to obtain the installation permit portion of the PTI or PTIO. The fee varies depending on the type of facility and project. Fee requirements are contained Ohio Revised Code (ORC) 3745.11 and range from \$50 to thousands of dollars. Sources issued a PTIO pay fees based on the tons of annual emissions at the facility for operation. Operational fee requirements are contained in ORC 3745.11(D) and range from \$50 to thousands of dollars. The following pollutants are assessed a fee: particulate matter (PM), sulfur dioxide (SO₂), nitrogen oxides (NO_x), and organic compounds (OC). The fee schedule is as follows:

- more than zero, but less than 10 tons per year (TPY) - \$100.00 per year
- 10 or more, but less than 50 TPY - \$200.00 per year
- greater than or equal to 50 TPY but less than 100 TPY - \$300.00 per year
- greater than or equal to 100 TPY - \$700.00 per year

NOTE: The annual fee is per facility, not per emissions unit or source

The requirements in this chapter also require that a PTIO be renewed and reissued every 10 years. While this does involve some cost to the facility, the renewal process involves less effort than obtaining the initial permit and would not exceed the initial estimate of between \$100 and \$30,000 per facility per permit. Typically, the cost of renewing a permit is substantially less (half the cost or less) than obtaining the initial permit.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

As mentioned above, these rules fulfill a federal requirement in the Clean Air Act that requires all states to develop a plan for attaining and maintaining the national ambient air quality standards (NAAQS). The rules in OAC chapter 3745-31 establish Ohio's New Source Review (NSR) permitting program, as required by the CAA and the Code of Federal Regulations (CFR) Title 40, Chapter 52.21, to ensure that all new and modified sources of pollution are issued an air pollution permit (PTI or PTIO).

Also as mentioned above, the alternative to these rules is allowing U.S. EPA to operate the permitting program. Allowing U.S. EPA to administer the program would not be in the best interest of facilities in the state of Ohio, both in terms of the fiscal cost of the program to facilities and in the time that would be required to obtain a permit. Ohio EPA currently issues 90+ percent of the permits within the statutory 180 day deadline. In states where U.S. EPA operates the permitting program, issuance of permits can take 3 to 5 times longer than this which results in uncertainty in the business community as well as higher costs due to delays. For this reason, Ohio EPA feels that implementing the rules in OAC chapter 3745-31 justifies the fiscal impact to businesses.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules in OAC Chapter 3745-31 do provide exemptions, permits-by-rule, and General permits which may be used by small to mid-sized facilities that qualify for them. These exemptions, permits-by-rule and general permits are included in OAC rule 3745-31-03 which is a part of this rulemaking.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Ohio EPA uses enforcement discretion regarding fines and penalties for facilities committing a first-time violation are typically waived. The procedures specified in the agency's "Compliance Assurance through Enforcement" program are used to ensure implementation of the regulations.

18. What resources are available to assist small businesses with compliance of the regulation?

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.
- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.