



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 16 2014

REPLY TO THE ATTENTION OF:

Mike Hopkins
Division of Air Pollution Control
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Mr. Hopkins:

The purpose of this letter is to provide the U.S. Environmental Protection Agency's comments on the proposed changes to Ohio Administrative Code (OAC) 3745-31,¹ which are intended to add language required by Senate Bill 265, incorporate additional exemptions, and clarify allowed preconstruction activities. Our comments are articulated below.

OAC 3745-31-01 Definitions

Please remove or amend the definitions for "permanent," "quantifiable," "surplus," and "semi-public disposal system" as the Ohio Environmental Protection Agency (OEPA) described in its letter to EPA's George Czerniak, emailed on August 26, 2014.

OAC 3745-31-03 Exemptions and permits-by-rule

1. As part of the submittal of this rule to EPA for approval into the state implementation plan (SIP), the OEPA must, under Section 110(l) of the Clean Air Act (CAA), submit a demonstration showing that the permanent exemptions in OAC 3745-31-03(B)(1)(uu) to (iii) and the permits-by-rule (PBR) in OAC 3745-31-03(C)(2)(l) to (m) are protective of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, reasonable further progress demonstrations and visibility, and are not in violation of Section 193 of the CAA, "General Savings Clause."
2. The PBR for paved and unpaved roadways and parking areas should prohibit the permittee from employing chemical dust suppressants in amounts that would create the risk of surface water or groundwater contamination.

¹ Specifically OAC rules 3745-31-01, 3745-31-03, 3745-31-05, and 3745-31-33.

OAC 3745-31-05 Criteria for decision by the director

OAC 3745-31-05(A)(3)(iv) exempts sources subject to plantwide applicability limits from the requirement to employ Best Available Technology (BAT), and OAC 3745-31-05(A)(3)(f) and (g) state that BAT shall be equivalent to existing SIP limits for certain sources. As part of the submittal of this rule to EPA for approval into the SIP, the OEPA must, under Section 110(l) of the CAA, submit a demonstration showing that these provisions are protective of the NAAQS, PSD increments, reasonable further progress demonstrations and visibility, and are not in violation of Section 193 of the CAA, "General Savings Clause."

OAC 3745-31-33 Site Preparation Activities Prior to Obtaining a Final Permit PTI/PTIO

This rule is not consistent with the CAA because it does not require the OEPA to review and approve proposed construction or modification prior to construction activities. Under the rule as drafted, the OEPA, the public, and EPA would not have the opportunity to review and determine whether the project will be in compliance with the CAA before construction starts, including a determination of whether the proposed construction will interfere with attainment or maintenance of the NAAQS or will violate a control strategy. EPA would not consider the rule, as written, approvable for the following reasons:

1. OAC 3745-31-33 is not consistent with 40 C.F.R. 51.160(a), which requires a permitting authority to implement procedures to determine whether a project will interfere with the attainment or maintenance of the NAAQS. The lack of administrative approval procedures in OAC 3745-31-33 for preconstruction activities prior to construction violates this provision.
2. OAC 3745-31-33 is not consistent with 40 C.F.R. 51.160(b) and Section 110(a)(2)(c) of the CAA, which require a permitting authority to implement procedures that can prevent construction or a modification of a project if it will interfere with the attainment or maintenance of the NAAQS. The lack of administrative approval procedures in OAC 3745-31-33 for preconstruction activities prior to construction violates this provision.
3. OAC 3745-31-33 contains a "Director's Discretion" provision that allows the OEPA's Director to unilaterally determine that activity not listed in its rule can be undertaken prior to permit issuance (as an allowed preconstruction activity). The Director's Discretion provision is not allowable under the CAA because it would in effect delegate SIP-approval to a State.
4. In accordance with 40 C.F.R. 51.166(b), the OEPA must provide a demonstration that its definitions are at least as consist as the definitions in 51.166(b).
5. Section 110(i) of the CAA provides that a permitting authority cannot change its SIP unless it meets 110(l) of the CAA. Relaxations to a State's SIP require a 110(l) demonstration showing "that the national ambient air quality standards, PSD increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented" (40 C.F.R. 51 App. V 2.2(d)). The current Ohio

SIP requires that sources obtain a permit prior to construction, and, in order to be approved, the revision to this requirement must be shown to be protective of the requirements of the CAA. The OEPA must provide such a 110(1) analysis with its request for a SIP revision.

Thank you for this opportunity to comment on these proposed rules at this point in the process. We look forward to working with you regarding the points set forth above. If you have any questions, please feel free to contact Richard Angelbeck, of my staff, at (312) 886-9698.

Sincerely,

A handwritten signature in cursive script that reads "Genevieve Damico". The signature is written in black ink and is positioned above the typed name and title.

Genevieve Damico
Chief
Air Permits Section