

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-110: "Nitrogen Oxides, Reasonably Available Control Technology (RACT)"

Rule Number(s): OAC Chapter 3745-110, Rules 01 to 05

Date: October 8, 2012

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Rescinded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.

Ohio Administrative Code (OAC) Chapter 3745-110 establishes requirements for emissions of nitrogen oxides (NO_x) from very large, large, mid-size, and small boilers, stationary combustion turbines, or stationary internal combustion engines as defined in OAC rule 3745-110-01, or miscellaneous sources located at facilities that emit or have the potential to emit a total of more than one hundred tons per year of NO_x emissions from all sources at that facility. NO_x is a precursor compound which, along with volatile organic compounds (VOCs) can form ozone. Ozone is one of the six criteria pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under the Clean Air Act.

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

Rule Number	Authorizing Statute	Proposed Action
3745-110-01	3704.03(E)	Amended
3745-110-02	3704.03(E)	Amended
3745-110-03	3704.03(E)	Amended
3745-110-04	3704.03(E)	Amended
3745-110-05	3704.03(E)	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 3745-110 are intended to assist Ohio in attaining and maintaining the NAAQS for ozone. Nitrogen oxides (NO_x) are a precursor to ozone and can be used to control ozone levels. Ohio has submitted the rules in this chapter to U.S. EPA with a request that they become part of Ohio's state implementation plan (SIP) under Section 110 of the CAA. The rules have not yet been officially accepted as part of Ohio's SIP.

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

The rules in this chapter do not exceed any federal requirements. The federal requirement which the rules in this chapter were designed to fulfill is the attainment and maintenance of the ozone NAAQS. The rules in this chapter are based on rules developed for use in New York state, however, Ohio's rules are not as stringent as those in New York. New York's rules call for much more expensive and complex, post-combustion controls, whereas Ohio's rules were designed to favor more cost-effective combustion controls.

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)?

These rules were originally adopted in 2007 as part of Ohio's strategy for the attainment and maintenance of the ozone NAAQS and are still pending official approval by U.S. EPA. The public purpose of these rules is to assist Ohio in attaining the ozone NAAQS in the Cleveland/Akron/Lorain metropolitan area. Attainment of the NAAQS for ozone is mandated by the Clean Air Act and enforced by the U.S. EPA. If a state does not achieve attainment within a certain mandated timeframe, U.S. EPA can begin a sanctions clock which can lead to, among other things, loss of federal highway funds in non-attaining areas.

Effective September 15, 2009, U.S. EPA redesignated the Cleveland/Akron/Lorain area to attainment of the 1997 8-hr ozone NAAQS (74 FR 47414). Under Section 110 of the Clean Air Act, any control strategies that a state enacts to achieve attainment of a standard must remain in force to assist in maintaining the standard. Because these rules are part of Ohio's control strategy to attain the standard, these rules must remain in effect.

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

The fact that the Cleveland/Akron/Lorain metropolitan area is now attaining and maintaining the ozone NAAQS is, in part, a measure of the success these rules and Ohio's strategy for attaining the NAAQS in general.

Development of the Regulation

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

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

Ohio EPA established a 30-day early stakeholder comment period and requested comments from potentially affected parties. The comment period ended as of April 6, 2012. Ohio EPA Division of Air Pollution Control (DAPC) sent notice 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 one comment by GenOn Energy, Inc., requesting the Agency to expand the definition for "start-up unit" to include space heating units. Ohio EPA agrees with this suggested revision and has expanded the definition accordingly.

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 this chapter were based on rules developed for use in the state of New York, and on a model rule developed by the Ozone Transport Commission. Ultimately, the NO_x Emission limitations in Ohio's rules, while similar to the New York and OTC model rule, are less stringent than those rules on the basis that simpler and more cost-effective combustion controls can achieve the presumptive NO_x emission limits specified in Ohio's rules while still providing adequate reductions.

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?

The rules in OAC chapter 3745-110 are a single part of a larger plan for attaining and maintaining the ozone NAAQS in Ohio. The plan includes rules in several chapter of the Administrative Code including, among others, OAC chapter 3745-21, 3745-23, 3745-25, 3745-31, 3745-72, 3745-80, 3745-101, 3745-102, 3745-109, and 3745-112. The rules in these chapters form the basis of Ohio's SIP.

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 this chapter are performance based regulations. The rules set limits which must be met, and allow regulated sources to determine the methods by which they will meet the limits.

The rules also allow for the preparation of a "NOx RACT" study. This study is performed by facilities which cannot meet the regulated limits or for which there is not a predefined emission limit. The study allows facilities to determine an appropriate limit based on technical and economic feasibility of control strategies.

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

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another existing Ohio regulation.

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.

These rules have been in effect since December 22, 2007 and the regulated community has been required to comply with them since January 1, 2009. Ohio EPA is working with facilities as the 5-year review of their permits comes up to ensure that their permits reflect the appropriate limits, and that the facilities are applying these rules and complying with the appropriate emission limits.

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.

The rules in this chapter are applicable to very large, large, mid-size, and small boilers, stationary combustion turbines, or stationary internal combustion engines as defined in OAC rule 3745-110-01, and miscellaneous NO_x emission sources located at facilities that emit or have the potential to emit a total of more than one hundred tons per year of NO_x emissions from all sources at that facility; and the facility is located in Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, or Summit County. These rules are also applicable for new or modified units statewide.

Typical facilities at which these rules would be applicable are facilities that burn fossil fuels in a boiler such as mills, steam generating facilities, large stationary engines and combustion turbines used in a variety of industrial applications including the gas and oil industry. These rules can also be applicable at facilities where nitrogen oxides are a byproduct of the manufacturing process such as calcining facilities.

The cost of compliance with this chapter comes from the installation of control equipment and reporting for facilities which are required to meet the NO_x emission limitations outlined in OAC rule 3745-110-03. Facilities may also choose to perform a “NO_x RACT Study” under paragraph (I) of rule 3745-110-03 if the facility is not subject to the emissions limits specified in paragraphs (A) to (F) of rule 3745-110-03, or if the facility is subject to the emissions limits specified in paragraphs (A) to (F) of rule 3745-110-03 but the owner or operator claims that the applicable limit is technically infeasible and/or economically unreasonable (i.e. not cost-effective) to achieve.

Ohio EPA has determined that the upper limit for a cost-effective control technology is approximately \$5,000 per ton of pollutant controlled. It has been Ohio EPA’s experience

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that controls for facilities to comply with these regulations can be installed for between \$1,200 and \$2,500 per ton of pollutant controlled. The cost for a typical control technology, such as low NOx burners is approximately \$500,000 to \$2 million per facility depending on the size and number of emission units to be retrofitted at the facility.

In comparison, the cost for post-combustion controls, such as those required in the state of New York's rules, is typically greater than \$5,000 per ton of pollutant controlled. This exceeds Ohio's cost effectiveness limit, therefore, Ohio is not requiring facilities to utilize a post-combustion control strategy.

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

As mentioned above, these rules are a part of Ohio's strategies to attain the ozone NAAQS. It was necessary to attain this NAAQS as it is required under the Clean Air Act and can lead to potential fiscal sanctions if the standard is not attained.

Additionally, Reducing emissions benefits the state by providing a cost savings and economic benefit to the citizens through reduced pollution. Not only does reducing pollution provide for better enjoyment of the state's resources through cleaner air but also reduces property damage caused by pollution; reduces illnesses and reduces health care costs. These results, while impossible to quantify, are indeed much greater than the costs of compliance with these regulations.

Regulatory Flexibility

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

Yes. Paragraph (I) of OAC rule 3745-110-03 allows facilities to perform a NOx RACT study if there is not a pre-determined NOx emission limit for the facility type, or if the owner or operator claims that the applicable NOx emission limit is technically infeasible and/or economically unreasonable (i.e. not cost-effective) to achieve for their facility.

A list of applicable exemptions for affected facilities is included in paragraph (J) of OAC rule 3745-110-03.

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 Alan Harness, the primary contact for the

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NOx RACT Rules in OAC Chapter 3745-110, is available to answer questions. He can be reached by calling 614-644-4838 or by e-mail at alan.harness@epa.state.oh.us.