



Division of Air Pollution Control

Response to Comments

Rule: OAC Chapter 3745-14, NOx Budget Trading Program, 5-year review

Agency Contact for this Package

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Ohio EPA held a 30-day public comment period on these rules ending June 13, 2014. This document summarizes the comments and questions received during the 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 parentheses.

General/Overall Concerns

Comment 1: The Utilities recommend that Ohio EPA rescind these rules because they are no longer necessary. Ohio EPA even admits this in its Business Impact Analysis ("BIA"). First, as noted, "the state of Ohio has attained the NAAQS for the 1997 8-hr ozone standard in all non-attainment areas statewide." BIA, p.4. Second, Ohio EPA acknowledges that these rules are duplicative of the subsequent adoption of the Clean Air Interstate Rules ("CAIR"), Ohio Adm. Code 3745-109. BIA, p. 5. Third, Ohio EPA also acknowledges that the NOx Budget Trading Rules are inactive at this time. *Id.* Finally, while CAIR has been remanded, it remains in effect at this time. Further, in the U.S. Supreme Court's recent decision in *Environmental Protection Agency v. EME Homer City Generation, LP.*, 572 U.S. - (Apr. 29, 2014), the U.S. Supreme Court held that U.S. EPA had the discretion to create cap-and-trade rules to address cross-state air pollution. While the case has been remanded for further

proceeding to the D.C. Circuit Court of Appeals, CAIR remains in effect until an alternate cap-and-trade program is promulgated to replace CAIR. Thus, the NOx Budget Trading Rules are not necessary as "fallback" rules. **(Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP on behalf of the Ohio Utilities Group)**

Response 1:

Ohio EPA agrees with the commenter that the rules in this chapter establishing the NOx Budget Trading program are no longer necessary for administering the NOx Budget program. Since the promulgation of the Clean Air Interstate Rules, USEPA no longer recognizes or operates the NOx Budget Trading program for utility boilers. This fact is discussed in the comment section of paragraph (C)(2)(a) of OAC rule 3745-14-01. Regardless of the status of the NOx Budget Trading program, Ohio EPA must maintain a portion of OAC Chapter 3745-14. Phase II of the NOx SIP call dealing with the requirements for affected Portland cement kilns (OAC rule 3745-14-11) and Stationary internal combustion engines (OAC rule 3745-14-12) is still in effect and independent of Ohio's CAIR program.

Upon receipt of these comments, Ohio EPA began discussions with USEPA to confirm that rescission of the rules was possible with the intent of rescinding the NOx Budget Trading portion of the rules in this chapter.

During the course of the discussions, Ohio EPA was informed by USEPA that USEPA will not be acting on redesignation requests and maintenance plans based on emissions reductions attributable to the Clean Air Interstate Rules (CAIR) or the Cross State Air Pollution Rules (CSAPR) and recommended Ohio maintain our NOx Budget Trading Program rules and develop emission inventories based on the reductions achieved by the NOx Budget Trading program.

Based on the discussions with USEPA, if Ohio were to rescind the rules in OAC Chapter 3745-14 at this time, Ohio may no longer be able to take credit for emissions reductions attributable to the NOx Budget Trading program. In the near future, Ohio EPA anticipates we will be working on redesignation projects for the 2008 ozone standard. Without the ability to use the emission reductions obtained through the NOx Budget Program in determining maintenance, Ohio may not be able to show maintenance of the standard, resulting in an inability to redesignate certain areas of the

state. For this reason, Ohio EPA will maintain the rules at this time with no changes, however, Ohio EPA will maintain these comments on file for consideration with future rulemaking efforts on these rules.

End of Response to Comments