

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Rule 3745-21-09, "Control of emissions of volatile organic compounds from stationary sources and perchloroethylene from dry cleaning facilities."

Rule Number(s): OAC Rule 3745-21-09

Date: August 29, 2013

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Rescinded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) Rule 3745-21-09 establishes requirements for the control of emissions of volatile organic compounds (VOCs) from stationary emission sources. VOCs are a precursor compound from which ozone is formed. 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. The intent of this rule is to prevent emissions of VOCs to allow the state of Ohio to attain and maintain the NAAQS for ozone.

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

Rule Number	Authorizing Statute	Proposed Action
3745-21-09	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). This rule is intended to assist Ohio in attaining and maintaining the NAAQS for ozone. Volatile organic compounds (VOCs) are a precursor to ozone and can be used to control ozone levels. This rule was originally submitted to U.S. EPA as part of Ohio's state implementation plan (SIP) under section 110 of the CAA in the 1980's and has been updated subsequently as the need arose. The changes being proposed in this rulemaking will be submitted to U.S. EPA as a modification to the current SIP.

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

This rule does not exceed any federal requirements. The federal requirement which this rule was designed to fulfill is the attainment and maintenance of the ozone NAAQS. The requirements in this rule are typically based on U.S. EPA guidelines or requirements.

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)?

This rule was originally adopted in 1979 as part of Ohio's strategy for attaining and maintaining the ozone NAAQS. This rule has been updated periodically as U.S. EPA has identified new industries and processes that require control. The requirements in this rule are typically based in Control Technology Guidance (CTG) documents developed and issued by U.S. EPA.

The one change being considered for this rulemaking is as follows:

Paragraph (DDD) is being amended to allow existing gasoline dispensing facilities (GDFs) to decommission existing Stage II vapor recovery systems.

On May 16, 2012, U.S. EPA issued a waiver in the Federal Register (77 FR 28772) indicating that on-board vapor recovery technology in automobiles had progressed to a point where add-on stage II vapor recovery was no longer necessary. Based on this, Ohio plans to phase out the requirements for Stage II vapor recovery over the next 2 to 3 years. Therefore, Ohio EPA is adding language to this rule requiring existing gasoline dispensing facilities (GDFs) to decommission their stage II vapor recovery systems by January 1, 2017.

Specifically, Ohio EPA is deleting paragraph (DDD)(4)(g)(i)(b) from the rule and adding paragraphs (DDD)(5)(d) and (DDD)(5)(e). Paragraph (DDD)(5)(d) contains the requirements to be followed when decommissioning a Stage II system at an existing GDF. The requirements of paragraph (DDD)(5)(d) will become effective January 1, 2014 or upon the effective date of the amended rule, whichever is later.

Paragraph (DDD)(5)(e) requires that, by January 1, 2017, all existing GDFs with a Stage II vapor control system will have decommissioned that system according to the requirements of paragraph (DDD)(5)(d). Paragraph (DDD)(5)(e) also allows exemptions from decommissioning for GDFs that can demonstrate that is either infeasible to remove their systems or a substantial economic hardship. This exemption allows an extension of one year to the deadline for these facilities.

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

The fact that the areas in which this rule is applicable are now attaining and maintaining the Ozone NAAQS is, in part, a measure of the past success of this rule and Ohio's strategy for attaining the NAAQS in general. The success of the amendments to paragraph (DDD) will be determined by the number of facilities decommissioning existing Stage II systems.

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 has been working with industry for some time (18+ months) to establish reasonable and effective language for the decommissioning of existing Stage II systems. Ohio EPA previously amended this rule in April, 2013 to exempt new GDFs from the Stage II requirements. The language for this rulemaking is an extension of the rule language development process that resulted in the April, 2013 changes.

For historical reference, the comment period for the April, 2013 amendments in paragraph (DDD) ended June 29, 2012. 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 as well as holding on-going meetings with industry representatives.

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

The proposed draft language in paragraph (DDD) has been created through an iterative process with the exchange of draft language and comments between Ohio EPA and potentially affected parties (industry). The amended language included in this package has been agreed upon by all parties.

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?

This rule in general has been developed over the years, primarily using U.S. EPA guidance documents or established information on Best Available Technologies.

The proposed amendment to paragraph (DDD) of this rule is based on the U.S. EPA waiver published in the May 16, 2012 Federal Register (77 FR 28772).

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?

This rule is 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 Chapters 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 to fulfill the requirements of the federal Clean Air Act.

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 amendments to paragraph (DDD) of this rule require existing GDFs to follow the processes and procedures set forth in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09". This document is an industry standard, state-of-the-art protocol written by the Petroleum Equipment Institute in conjunction with health and safety professionals from across the country. The use of the processes and procedures in this manual assure the safe removal/decommissioning of the Stage II systems for both the contractor and the environment.

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.

OAC rule 3745-21-09 has been in effect since 1979 and has been a part of Ohio’s SIP since the 1980’s. Ohio EPA works with facilities when they apply for the environmental permits to determine the appropriate categories in this rule that may apply to the facility and establishes it through the issuance of the permit.

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 emissions of VOCs from stationary sources in the state of Ohio. This rule has been in effect in Ohio for more than 30 years and has been applied to thousands of sources operating in the state.

The proposed amendment in this rulemaking establishes relieve sources from requirements which Ohio EPA and/or U.S. EPA have identified as unnecessary and not environmentally friendly. Ohio EPA does not perceive an adverse impact associated with the proposed amendments to this rule.

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

As mentioned above, the proposed amendments to this rule establish relieve sources from unnecessary requirements while still maintaining protection of the environment. Ohio EPA does not perceive an adverse impact with the amendments to this rule.

Regulatory Flexibility

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

Amended Paragraph (DDD)(5)(e) allows exemptions from decommissioning for GDFs that can demonstrate that it is either infeasible to remove their systems or a substantial economic hardship. This exemption allows an extension of one year to the deadline for these facilities.

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

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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.state.oh.us.