



Division of Air Pollution Control

Response to Comments Draft Rule Language Comment Period

Rule: OAC Chapter 3745-31 Permits to Install New Sources

Agency Contact for this Package

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Ohio EPA provided a 32 day comment period which ended on May 27, 2009 for many of the rules in OAC Chapter 3745-31. Ohio EPA then provided a 30 day comment period for these same rule changes and additional rule changes within OAC Chapter 3745-31 that ended on May 10, 2013. This document summarizes the comments and questions received at the public hearing and/or during the associated comment periods.

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 commenter feels that the Ohio EPA should modify or withdraw certain proposed rule changes as they are inconsistent with federal law and/or regulations, and/or because they appear to be offered for the purpose of clearing legal obstacles to the approval of the proposed Middletown Coke Company facility in Middletown, Ohio. **(Thomas Cmar and Shannon Fisk on behalf of NRDC, Sierra Club and SunCoke Watch Inc.)**

The commenter stated that it would like to voice their opinion as homeowners and residents living in the immediate area of the proposed SunCoke plant to be built in Middletown, OH.

Although this plant will be "Green" compared to the coke plants of the past, coke plants by their very nature are dirty. The process and ingredients remain the same-smell, dust, trains, coal piles, dump trucks and the smog and by-products of the process, not to mention mechanical failures, system errors, and alarms. What happens as the equipment ages, seals wear out and the efficiency wanes? The pollutants increase and the air, land & water become more contaminated. The original plans are to build 100 coke ovens-are 100 more close behind? There has been very little said about the additional use of this facility as a power generating operation. Will that create additional noise & pollution? The proposed

plant is to be modeled after the SunCoke plant in Haverhill, OH. That plant is not in or near a city or populated area and far from any neighborhood or residential area. That plant has also been in violation numerous times since it began operation. That is not acceptable. The Ohio EPA needs to be more concerned with the health & well being of the citizens than the desires of "big business," Please consider the past violations, the current problems with the permits, the lies & deceptions when considering issuing a permit for this project. Please hold SunCoke accountable for their past & current actions. **(Karl and Pam Knake Middletown, OH)**

The commenter asks, can you explain the "need" for these changes? Can you show just cause why these rules need to be changed? Is there a process that allows residents to propose rule changes to be included? If the director is given the ability to administer permits without following the system in place can the director be named as liable in civil action? Can that language be added? **(Bob Kelley)**

The commenter states that he hopes and prays what he is reading about the Ohio EPA is not true, changing EPA laws for SunCoke. The commenter is a home builder and can say the commenter would be put in jail if the commenter tried to build a home under the new EPA changes that the commenter has read that are being made. In building a home we are not talking major changes to our environment, but with SunCoke we are. To think the EPA is there to look out for everybody's clean air. It is looking like what the commenter is reading the Ohio EPA only concern is to get this Coke plant put in Middletown Ohio regardless of the cost to surrounding area, that people's health is no longer EPA concern. The commenter never thought he would see the day where the EPA would change its laws for a factory, not for all, just a few. **(Doug Webb)**

The commenter states that when Ohio EPA starts making rules to fit the big company that is when people like the commenter get very upset. The commenter asks, does Ohio EPA even care about the people anymore or do you care about the money? There will be a fight on with the EPA trying to change these rules just to satisfy AK Steel and Suncoke. **(Keith Kahl)**

The commenter states that she objects to the above rule changes 3745-31-01 & 3745-31-22 & 3745-33 that would benefit the proposed Middletown Coke Company plant. It appears to the commenter to be so coincidental that these specific rules are even being considered that would benefit Middletown Coke Company and their big money lobbyist that the commenter believes it is intentional.

The commenter does not believe that these specific rule changes protect the health, safety and welfare of the residents that live in the close proximity of the proposed Middletown Coke Company. The commenter asks, doesn't Ohio EPA care about the people around this proposed facility? Where are my rights to clean air and enjoyment of my life without coal dust, noise and excessive pollution? The commenter believes that the Ohio EPA is throwing the baby out with the bath water so to speak in Butler County. Don't believe the beneficiaries of Middletown Coke they don't care what they do anyone. It is all about them and

making money for themselves including SunCoke. They have demonstrated how they care about their neighbors.

If the Ohio EPA was truly interested they would check out how AK Steel takes off their pollution controls when it rains on the weekends. The plant vibrates and they run water trucks down Oxford State Road to cover up the red oxidation on the road. In September 2008 when there where hurricane winds in Butler County I drove by AK Steel on Oxford State Road and the coal dust coming off of the coal piles was like I was in a coal dust storm reminiscent of the dust bowls. Just take a drive by if you can manage to leave your office desk to Oxford State Road by the AK Steel facility in Middletown Ohio and look at the houses covered with coal dust and the lack of caring for their homes just by living by a nasty dirty facility. I do not want that for my home nor would you. It won't be hard to find, follow the smell.

These proposed changes do nothing to help the environment in Butler County, Ohio which is already stagnant because it is in the Miami Valley. The commenter asks, is Ohio EPA trying to make everyone have a respiratory illness even worse? AK Steel in Middletown Ohio which would ultimately be the recipient of any benefit to the area is a nasty, filthy company that is only thinking about selling out the city of Middletown for the sale of AK Steel. Someone or a group of someone's will make out by the sale of the company. I think the proposed changes do not have the best interest of the majority of the people of the State of Ohio and Butler County in mind.

The commenter thinks that the proposal to have a conveyor belt above the road is practically absurd for the residents.

The commenter would like to know specifically if the Ohio EPA has knowledge of Martco Inc. located at 3350 Yankee Road Middletown Ohio 45044 being required to "clean up" their property before doing any expansion to their business. Would that be required of the residents as well? The commenter fears for her environment since she have asthma. The added pollution does nothing to help the environment that the commenter thought the Ohio EPA would protect. Boy was I wrong they just care for "big money polluters" in the commenter's opinion. How about the arsenic leak by AK Steel in the Great Miami River? I see road signs to protect the watershed of the Great Miami River & Canal in Middletown. Where is the Miami Conservancy District on this issue? The commenter went on the Bike Trail in the Middletown Trenton area and the area around where AK Steel is polluting was impassable on the trail. The commenter asks, why does the Miami Conservancy District put up with this? Where is the protection for the Great Miami River and the Miami River Canal within a very very close proximity. Sounds like the Ohio EPA is talking out of both sides of their mouth to me in my opinion. You either protect or you don't. Why does the Ohio EPA profess to care when their actions prove they don't.

Have you even talked to the people by the Haverhill plant about the pollution and accidents at their plant? There you will find the truth.

Has anyone with the Ohio EPA even looked at the cost to Ohio Superfund's for pollution clean-up? Take a look at the cost to THE CITIZENS of Ohio for the AK New Miami site and Dick's Creek?

It is the commenter's opinion that Ohio EPA does not have the "Clean Air Act" which is the Law in mind by Ohio EPA's proposed actions. **(Jennifer Flinchum)**

It appears the Ohio EPA is placing the carts before the horses in allowing construction to start prior to issuing proper permitting.

Please, on the behalf of your constituents, don't allow these so called rule changes to be applied for the sake of our and your children/grandchildren. It appears money talks more so than before. **(Dale Cole)**

It appears to the commenter that the Ohio EPA's proposed rule changes are being made to benefit SunCoke and AK Steel at the expense of my health. I vote and I am opposed to these changes. **(Scruttin Izer)**

The commenter has read with interest the attached rules proposing changes to the Ohio EPA's existing rules. As proposed these changes are written to directly benefit Middletown Coke Company AND AK Steel to the detriment of local residents.

As an OHIO resident, I oppose such changes for several reasons:

1. The air quality in this area of Ohio is one of the POOREST in the United States, i.e. The Cincinnati, Middletown, Wilmington area is #15 in Ozone pollution and #8 in particulate matter - and this is in the NATION. <http://realestate.yahoo.com/promo/americas-most-polluted-cities.html>. This is not a rank to be proud of!
2. As a matter of principle Ohio EPA should never change a rule to benefit one company; this is always bad business and in this case, bad for the citizens you are obligated to protect. Changing the rules, such as proposed, makes it easier, not more difficult, to adversely affect the air quality in this area.
3. This change in the rule will NOT improve the air quality of Butler County - quite the opposite! This area is already a non-attainment area and one of the most polluted communities in Ohio, indeed in the nation. The Ohio EPA is charged with looking out for the health and well being of its citizens. Relaxing the requirements for clean air is in direct conflict with that charge and is not in the best interest of residents.

I suspect political pressure is being placed on the Ohio EPA and I ask that you not succumb to such pressure. Under the current rules, Middletown Coke Company cannot legally build their coke plant at this location without violating the Clean Air Act and the Ohio EPA regulations. This proposal to revise the rules comes at the very same time President Obama is putting pressure on the Federal EPA to TIGHTEN the rules/laws to clean up the air and the environment. As he says "enough is enough." Ironic that at this point in time Ohio, one of the worst states for air pollution, should be proposing new legislation to relax the rules, rather than tighten them.

Please reconsider these proposals and instead, consider the health and well being of the residents of Ohio, in general, and in Butler County, specifically. Please do not revise the Ohio EPA rules unless it is to STRENGTHEN the restrictions and make it more difficult, not less, for the corporations and industries in Butler County to pollute the air and water of the environment we are working so hard to protect. It is imperative that the Ohio EPA and the Federal EPA consider the long term affect of pollution on our global environment and really crack down on those businesses who fail us by continuing to emit dangerous pollution into the air and water. PLEASE do your job and stop "adjusting" the rules to benefit big business. Instead, protect us, your citizens, from continuing to suffer from chronic health problems brought about by corporate exploitation.
(Karen Shaffer)

Although many of the rules, as stated, are in draft to comply with federal regulations, it appears that others, as with those commented on above, have been driven by the needs of big business. I challenge the OEPA to review their mission. OEPA's mission as stated on their website reads as follows:

"To attain and maintain the air quality at levels that will protect the environment for the benefit of all."

It's the benefit of ALL - citizens, children, families and elderly – not just big business. **(Lisa Frye, President of SunCoke Watch Inc.)**

Response 1:

We disagree with the commenters' belief that Ohio EPA constructed rule revisions in OAC Chapter 3745-31 to help benefit one individual company. These rule changes do not apply to the Middletown Coke or AK Steel permits that have already been issued. Instead, they would only apply to companies that obtain a permit after the rules become final.

Furthermore, Ohio EPA is proposing new rules for three main purposes.

First, Ohio EPA is revising OAC Chapter 3745-31 based on rules promulgated by U.S Environmental Protection Agency. On May 16, 2008 the U.S. EPA published final revisions to 40 CFR Parts 51, 52 and Part 51 Appendix S pertaining to New Source Review (NSR) implementation for PM2.5 as a regulated NSR pollutant. [73 FR at page 28321] U.S. EPA's final rule amends the NSR regulations to establish the minimum elements for State agency programs implementing NSR for the PM2.5 National Ambient Air Quality Standards NAAQS.

Second, Ohio EPA is revising the rules to add or clarify requirements to address Infrastructure State Implementation Plan (SIP) deficiencies identified by U.S. EPA (77 FR 65478).

Third, Ohio EPA is revising rules based on a required 5-year-review of Ohio Administrative Code Chapter 3745-31.

In addition to those main reasons, Ohio EPA had a list of revisions that would provide more clarity or improve the rule for future use. With that in mind, it is our agency's intent to promulgate rules that are consistent with the Division of Air Pollution's goals, including timely and efficiently issuing air permits, working

towards attaining and maintaining the NAAQS as well as protecting the environment and public health of Ohioans. When Ohio EPA developed the draft interested party rules we strived to promulgate our rules consistent with federal and state law. We appreciate any constructive comments on how the commenters are interpreting our draft rules and will respond to specific comments under the individual rule headings below.

Comment 2: The commenter states that he took a look at the rules that Ohio EPA has put out for comment, specifically to address the structural [Prevention of Significant Deterioration] PSD requirements as they relate to infrastructure SIPs, and he believes the draft rules are wholly consistent with US EPA's requirements as they relate to:

- 1) [Nitrogen Oxide] NOX as a precursor provisions per the Phase 2 Ozone Implementation Rule
- 2) Identifying PM2.5 precursors, per the 2008 NSR Rule
- 3) Accounting for PM2.5 and PM10 condensables in applicability determinations and emission limits per the 2008 NSR Rule
- 4) Adopting the correct increments for PM2.5 per the 2010 NSR Rule

(Wei-an 'Andy' Chang, Environmental Engineer, EPA Region 5, Air and Radiation Division)

Response 2: Ohio EPA appreciates the commenter's support in our rule making changes.

Comment 3: The commenter suggests retaining the subset numbers and letters in rule language instead of removing them. I suggest this especially if no changes occur to the language. By retaining the subset numbers and letters, any cross references from other OAC or ORC rules can be made without changes to the subsets and without inadvertent omissions or loopholes. Example: Rule 3745-31-07(E) where number (1) is omitted and paragraph (E) makes no mention of number (1). This occurs again in rule 3745-31-24(G) where paragraph G is changed to several numbers and subsets. Special attention needs to be given to other OAC and ORC rules that corresponding letters, numbers, paragraphs and subsets can be cross-referenced easily. For example, the change in language in rule 3745-31-29(B) suggests "if the following apply". For clarification purposes, my suggestion would be to clarify if the words "if the following apply" imply the subsets following both must apply for the condition of the rule to be true or if the language indicates that either one of the subsets following independent of one another can be true. **(Scott Bushbaum, Ohio Citizen Action)**

Response 3: The new numbering format was added to bring the agency more in line with the rule formatting conventions of the Legislative Service Commission (LSC) and to create an agency wide standard. Ohio EPA will consider this comment in the future and make sure any cross-references will be updated when the numbering of a rule is changed.

Rule 3745-31-01, "Definitions"

Rule 3745-31-01(L)

Comment 4: The commenter states that the definition of “applicable laws” should not be changed. The inserted new language does not add any meaning not already covered by the existing language, and is grammatically flawed. It is not necessary, and does not add clarity. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

The commenter states that proposed OAC 3745-31-01(L) adds new language that creates confusion as to the scope of what is to be considered “applicable laws.” The current regulation is clear and unambiguous; therefore, the propose change is unnecessary. **(April Bott on behalf of Shelly Companies)**

Response 4: It is not Ohio EPA’s intent to make this definition confusing. We feel that by including the language we are making it clearer that “any provision of the Ohio state implementation plan that has been approved or promulgated by the United States environmental protection agency” is considered part of the requirements under the Clean Air Act (CAA). We do not interpret our changes to mean that any SIP revisions are considered applicable law. We interpret the revised language to amplify what already applies under the CAA.

Ohio EPA agrees that the language is grammatically flawed, and will revise the paragraph as follows:

(L) "Applicable laws" means any applicable provisions of Chapters 3704. and 3745. of the Revised Code; rules, regulations, and orders of the Ohio environmental protection agency, the Clean Air Act; and rules and regulations of the administrator of the United States environmental protection agency (*including any Ohio rule, law, or provision of the Ohio state implementation plan that has been approved or promulgated by the United States environmental protection agency.*).

Rule 3745-31-01(T)

Comment 5: The commenter states that the definition of [Best Available Technology] BAT should be modified to reflect the General Assembly’s mandate found in R.C. 3704.03(T)(1-4). **(April Bott on behalf of Shelly Companies)**

Response 5: Ohio EPA believes that the definition of BAT accurately describes the Ohio Revised Code (ORC) (3704.03(T)(1)-(4)). Ohio EPA will incorporate other parts of this law in OAC rule 3745-31-05(A)(3) in the very near future when this rule is revised.

Rule 3745-31-01(MM) and (NN)

Comment 6: The commenter states that the proposed new definition of “emergency” should be omitted because “emergency” is already defined in OAC 3745-31-03(A)(4)(a)(viii), which this draft rulemaking does not propose to amend.

The new defined term “emergency generator” is intended to correspond with the emergency generator exemptions in OAC 3745-31-03, but that rule uses the term “emergency electrical generator.” Paragraph (NN) should be revised to be consistent with OAC 3745-31-03, and should also include emergency water pumps and air compressors (which are included among emergency engines subject to the Subpart ZZZZ [National Emission Standards for Hazardous Air Pollutants Compliance Monitoring] NESHAP). In subparagraph (2), the reference to “40 CFR Part 60.4231(d), Subpart JJJ,” should be changed to “40 CFR Part 60.4243(d), Subpart JJJJ.” And in subparagraph (3)(b), the words “non-emergency demand respond” should be “non-emergency demand response.” **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

The commenter believes that proposed Paragraph (MM) should be omitted because “emergency” is already defined in OAC rule 3745-31-03(A)(4)(a)(viii), which this draft rulemaking does not propose to amend. Further the new definition of “emergency generator” in proposed Paragraph (NN) should be modified to add, at the end of subparagraph (2), the phrase: “except that peak shaving and other forms of non-emergency demand response shall not be allowed.”

Expanding the emergency generator exemptions in OAC 3745-31-03(A)(4)(a)(viii) to include non-emergency demand response would harm Ohio’s environment, by allowing uncontrolled, higher-emitting “emergency generators” to displace cleaner, lower-emitting capacity generation resources. Permitting emergency generators to provide non-emergency demand response would also harm Ohio’s economy and the competitive market for electricity and energy capacity.

In response to increasingly stringent environmental regulations, Ohio’s utilities have invested billions of dollars in air pollution control equipment. Allowing emergency generators to provide non-emergency demand response displaces cleaner, lower-emitting capacity generation resources resulting in an increase of air pollution emissions. Since RICE units are subject to limited regulation, they remain a significant source of nitrogen oxides (NOX), volatile organic compounds (VOCs), carbon monoxide (CO), and soot, which are all key contributors to air pollution. For example, NOX emission rates from [Reciprocating Internal Combustion Engines] RICE units are 5 to 15 times higher than other controlled fossil fuel generating units, while also emitting large amounts of VOCs.

The commenter supports the need for a reliable electric system and believes emergency stationary RICE generation units can be called upon in true emergency situations for a limited timeframe. However, allowing uncontrolled emergency generators to participate in non-emergency demand response for financial gain, such as peak shaving, would have a negative impact on Ohio’s environment and Ohio’s economy by displacing permanent capacity that have invested in air pollution controls and distorting the efficient functioning of energy and capacity markets. Accordingly, to protect Ohio’s environment, jobs and support a competitive market for energy and capacity resources in Ohio, the new

proposed definition of “emergency generator” in proposed Paragraph (NN) should be modified to clarify that peak shaving and other forms of non-emergency demand response by emergency generators will not be allowed in Ohio.

Note: Ohio EPA’s draft rules include similar language in draft OAC 3745-31-01(NN)(3)(b), although the word “response” is mistyped as “respond.” **(Raymond Evans, Vice President, Environmental, First Energy)**

The proposed rule inexplicably defines “Emergency” in 3745-31-01(MM) using three of the four categories that are in the existing definition of “Emergency” within 3745-31-03(A)(4)(a)(vii)(a) while excluding the category where a regional transmission organization has identified conditions that require implementation of emergency plans to avoid electrical blackouts and other extreme conditions that jeopardize the electric grid. The existing and proposed rules both define emergencies to include “an electric power outage due to failure of the electrical grid.” The Utilities do not believe that Ohio EPA should exclude the emergency actions that are taken to avoid such outages and failure of the electrical grid. As in 3745-31-03(A)(4)(a)(viii)(a), the definition of “Emergency” within 3745-31-01(MM) should include emergencies called by a regional transmission organization.

Ohio EPA has included a new definition of emergency generator in OAC 3745-31-01(NN) that is inconsistent with the definition in OAC rule 3745-31-03(A)(4)(viii)(b). The Utilities believe that the new definition of “emergency generator” in proposed Paragraph (NN) should be modified to add, at the end of subparagraph (2), the phrase: “except that peak shaving and other forms of non-emergency demand response shall not be allowed.” Expanding the emergency generator exemptions in OAC rule 3745-31-03(A)(4)(a)(viii) to include non-emergency demand response would harm Ohio’s environment, by allowing uncontrolled, higher-emitting “emergency generators” to displace cleaner, lower-emitting capacity generation resources. Permitting emergency generators to provide non-emergency demand response would also harm Ohio’s economy and the competitive market for electricity and energy capacity. **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies (“the Utilities”))**

Response 6:

Ohio EPA is currently revising OAC rule 3745-31-03 as part of another rulemaking activity and the definition of emergency will no longer exist in OAC rule 3745-31-03. The definition was added to OAC rule 3745-31-01 to be consistent in keeping definitions for rules under OAC Chapter 3745-31 in OAC rule 3745-31-01.

Ohio EPA agrees that paragraph (NN) is intended to correspond with the emergency generator exemptions in OAC rule 3745-31-03. The terms were revised in both OAC rules 3745-31-01 and 3745-31-03 to correspond with one another. Paragraph (NN) now defines “emergency engine” and the PBR in OAC rule 3745-31-03 will be changed to refer to emergency engines that power emergency water pumps, emergency air compressors, and emergency electrical generators. We have revised the definitions for emergency and emergency engine in OAC rule 3745-31-01 and paragraph (NN) of OAC rule 3745-31-

03(B)(2)(a) (PBR for emergency electrical generators, emergency water pumps, or emergency air compressors powered by emergency engines) to be consistent with the requirements of 40 CFR Part 60 Subparts IIII and JJJJ and 40 CFR Part 63 Subpart ZZZZ.

The language in the federal regulations has changed from "...owners and operators may operate the emergency engine for a maximum of 16 hours per year as part of a demand response program if the regional transmission organization or equivalent balancing authority and transmission operator has determined there are emergency conditions that could lead to a potential electrical blackout, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level" to "...may be operated for emergency demand response for periods in which the Reliability Coordinator under the North American Electric Reliability Corporation (NERC) Reliability Standard EOP-002-3, Capacity and Energy Emergencies or other authorized entity as determined by the Reliability Coordinator, has declared an Energy Emergency Alert Level 2 as defined in the NERC Reliability Standard EOP-002-3. Ohio EPA has revised the rule to include similar language, stating that allowable non-emergency usage includes "emergency demand response for periods in which the regional transmission authority or equivalent balancing authority and transmission operator regional transmission authority or equivalent balancing authority and transmission operator has declared an Energy Emergency Alert Level 2 (EEA Level 2) as defined in the "North American Electric Reliability Corporation Reliability Standard EOP-002-3, Capacity and Energy Emergencies." Peak shaving and other forms of non-emergency demand response are not included." The revisions to OAC rule 3745-31-03 will be sent for Interested Party comment in the very near future.

Ohio EPA has revised OAC rule 3745-31-01(NN)(2) to state:

"Non-emergency usage does not include peak shaving or non-emergency demand response, except as provided for in 40 CFR 60.4211(f)(3)(i), 40 CFR 60.4243(d)(3)(j), and 40 CFR 63.6640(f)(i) and (ii)."

These rules allow 50 hours of operation to be used for peak shaving only until May 3, 2014, and Ohio EPA will leave this allowance in the rule to be consistent with the federal regulations. After this period, peak shaving and non-emergency demand response will not be permitted by emergency engines permitted under the emergency engine permit-by-rule. Ohio EPA has also issued an emergency engine compliance advisory that states:

"On April 30, 2013, Director Scott Nally issued [Final Findings and Orders](#) stating that Ohio EPA will not consider **peak shaving** operations by owners and operators of emergency electrical generators to be a violation of their Emergency Generator PBRs, from April 30, 2013 through May 3, 2014, if the owners or operators comply with the RICE NESHAP's operating restrictions and reporting requirements. Such owners and operators will not be required to apply for and obtain a revised permit to allow for **peak shaving** operation for this one-time, 50 hour operating period that expires May 3, 2014. Such owners and operators will, however, need to maintain all records required under the RICE NESHAP for **peak shaving** operation and submit a copy of those records to Ohio EPA by May 15, 2014.

For all other owners and operators of emergency electrical generators that are operating under an Emergency Generator PBR, however, Ohio regulations have not changed. If your emergency electrical generator is not an area source of hazardous air pollutants, or is not subject to the RICE NESHAP, you may not use your emergency generators for **peak shaving** or non-emergency demand response under the Emergency Generator PBR.”

Ohio EPA has corrected the word “response” in OAC rule 3745-31-01(NN)(3)(b) as suggested.

Rule 3745-31-01(LLL)

Comment 7:

The commenter states that the proposed new phrase “any one or a combination of the following” does not add any meaning or clarity. Each “one” and each “combination” are already covered by the existing language. Indeed, the new language suggests that an NSR project could be a major modification even if it does not produce a significant net emissions increase of a regulated NSR pollutant, which is contrary to the comment directly following subparagraph (2). To increase the clarity of the paragraph, however, the introductory clause (“Any physical change in or change in the method of operation...”) should be numbered “(1)” and the current subparagraphs “(1)” and “(2)” should be indented and renumbered as “(a)” and “(b)” as it relates only to those two subparagraphs.

Additionally, subparagraph (5), which defines the exceptions to the phrase “physical change or change in the method of operation,” should be moved to a separate paragraph in OAC 3745-31-01, after the definition of “Person.” Its current placement within the definition of “major modification” makes it unclear to other appearances of the phrase “physical change or change in the method of operation” in OAC 3745-31-01, such as in the definition of “New source review project” or “NSR project” in current paragraph (VVV). **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 7:

The new phrase “any one or a combination of the following” was added to bring the agency more in line with the rule formatting conventions of the legislative services commission (LSC) and to create an agency wide standard. The goal of the language change was not the addition of clarity, but was to move toward a universal rule language format across the agency’s rules. We agree that this does change the definition and this was not the intention. The phrase “any one or” was deleted so that the rule now reads “Any physical change in or change in the method of operation of a major stationary source that would result in a combination of the following.” The numbering of the subparagraphs was also revised as the commenter suggested.

Ohio EPA disagrees that subparagraph (5) should be moved to a separate paragraph as “physical change or change in the method of operation” is not defined under subparagraph (5), but rather subparagraph (5) explains exceptions to this phrase, as the commenter points out. We believe that explaining what

does not constitute a physical change or change in the method of operation belongs as a subparagraph under the definition for “major modification” since the phrase is part of the definition of “major modification.”

Rule 3745-31-01(NNN)

Comment 8: The commenter states that the proposed new term “nitrogen dioxides” in subparagraph (3) should be “nitrogen oxides.” **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 8: Ohio EPA agrees and has revised the rule as the commenter suggests.

Rule 3745-31-01(SSS)(1)(b)

Comment 9: The commenter asks, should the levels outlined in this paragraph be the same as those in 3745-31-13(H)(1) and should the listed compounds be the same? Paragraph 3745-31-13(H)(1)(k) addresses PM10 and PM 2.5, whereas, Paragraph 3745-31-01(SSS)(1)(b) addresses TSP only; 31-13(H)(1)(d) for SO₂ is listed as 13 micrograms/cubic meter and 31-01(SSS)(1)(b)(iv) for SO₂ lists 15 micrograms/cubic meter. **(Jenny Marsee on behalf of RAPCA)**

Response 9: Ohio EPA appreciates the commenters questions regarding the inconsistencies between OAC rule 3745-31-01 and OAC rule 3745-31-13. These rules are not meant to relate to one another. OAC rule 3745-31-01(SSS)(1)(b) is a state-only definition for a modification. The ambient air quality impacts listed per pollutant in this rule are trigger levels for a minor modification that does not involve increases in emission levels, but would impact the ambient air quality. However, we will amend paragraph (SSS)(1)(b) in OAC rule 3745-31-01 so that the pollutant levels contained in the definition chapter are consistent with the values found in 40 CFR 51.166, 40 CFR 52.21, since the values were derived from these values as defining a “de minimis” impact to the ambient air quality. Therefore we will be making the following amendments to the proposed rule:

- SO₂ will be amended to 13 micrograms/meters³
- Total suspended particulate will be replaced with particulate matter less than 10 microns (PM10) and particulate matter less than 2.5 microns (PM2.5).
- Lead will be revised to being tested on a 3 month rolling average rather than a 24 hour average
- Nitrogen oxides (NO_x) will be changed to an annual average rather than a twenty four hour average.

Rule 3745-31-01(VVV)

Comment 10: The commenter is in opposition to the following changes to 3745-31-01 (which eliminates the language in red) replacing it with the blue.
(VVV) ... (3) The following subparagraphs limit paragraphs (VVVTTT)(1) and (VVVTTT)(2) of this rule:

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs **between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs**; within the period beginning five years prior to the date on which the owner or operator of the facility submits an initial complete application for an installation permit for a new and/or modified emission unit(s) for the particular change or project, and ending on the date on which the owner or operator has identified in their initial application as the date that the new and/or modified emissions unit(s) are scheduled to start operating.

The commenter is opposed to the above rule language for the following reasons:

- a. They remove the clarity of the existing versions of these rules that are part of Ohio's approved State Implementation Plan;
- b. They remove the relationship between what the facility is actually permitted for and the actual emissions reduction / increases.
- c. The initial application itself may be modified, due to business changes or other reasons and the emissions increase/decrease may actually be substantially more or less;
- d. The facility may or may not commence operations on schedule and may, in fact, actually operate sooner or later, resulting in substantial emission changes which are inconsistent with what may have been originally intended;
- e. There is no opportunity for the agency to concur with or grant permit conditions which are consistent with the 'initial' completed application;
- f. There is no public comment or review opportunity for the initial application or resulting decisions, including the decision of whether or not there is reasonable further progress. These modifications eliminate an important public right to participate and comment. These modifications also eliminate the opportunity for the agency to learn information from the public. Further, there are no objective criteria upon which the director bases the proposed determination as to whether there is "reasonable further progress.";
- g. The modifications impede the ability of the agency to achieve and/or assure compliance with the National Ambient Air Quality Standards (NAAQS);
- h. There has been no demonstration that proposed changes will have not have on an adverse impact on the NAAQS in Ohio; and
- i. These modifications would make the Ohio law inconsistent with the existing approved SIP and the intent of the Clean Air Act.

It was certainly not the intent of the CAA to 'grandfather' emissions thru the netting process, based *anything*, put in the initial application, but to insure that the new permit was not going to contribute to air quality violations or unhealthy air. A netting process based on uncertain plans in an initial application that can be substantially modified at a later date simply fails to insure compliance with the NAAQS. If Ohio EPA adopts the proposed "netting process" Ohio EPA will be less certain about whether Ohio will actually achieve projected emission reductions. What will Ohio EPA do to address this problem?

Is it Ohio EPA's intent that this language apply to permits already issued or in the process of being issued?

Have these modifications been reviewed by U.S. EPA? **(Marilyn Wall on behalf of Sierra Club)**

Using the period beginning five years prior to the submission of the complete application date and ending on the date reported in the application to commence operation extends the "life" of the netting credits and allows businesses to utilize pollution offsets for a much greater period of time, thus further threatening human health.

Again, I find it concerning that the crux of the first Middletown Coke permitting process and subsequent ERAC appeal - the five year contemporaneous netting period - is being changed in draft rule to reflect the needs of an entity such as Middletown Coke.

What is the definition of "completed" application? Is it the paperwork – or is it considered "complete" only after all technical aspects of the permit have been submitted? I can only imagine the "interpretations" of what "complete" means and how that varied definition would be applied in any given circumstance. The definition in the rules at this point in time states "all information necessary for processing the application."

If this is true, than in the case of the emission reduction offsets (3745-31-22), a permit should not be issued under the discretion of the director as the application itself couldn't be considered "complete" under the OEPA's own rule of what "complete" is. How can the OEPA issue a permit without the application being complete?

Further, the date a source intends to start operating can significantly change from the initial application as it did with Middletown Coke. Middletown Coke stated they had to be operating by 12/21/09, but now state into 2011. That's a significant difference in projected time. **(Lisa Frye, President SunCoke Watch Inc.)**

The commenter believes that changing the contemporaneous period - extends the "life" of the netting credits allowing business to utilize pollution offsets for a longer period of time. This is an increase to our health risk and easier for bad business to operate. **(Barbara Stubbs)**

The commenter states that under the NSR provisions, the modification of a source qualifies as a "major modification," triggering major source permitting requirements, if it will result in an increase in the source's potential to emit ("PTE") regulated pollutants in excess of the "significance threshold" defined by regulation, unless either (i) the PTE for that pollutant is limited to below the significance threshold by federally or otherwise practicably enforceable physical or operational limitations; or (ii) the increased emissions of that pollutant are offset by contemporaneous decreases in emissions of that pollutant, such that there is no "significant net increase" in emissions, in a calculation process known

as “netting.” See 42 U.S.C. §§ 7475(a) (PSD), 7503(c) (NNSR); 40 C.F.R. §§ 51.166 (PSD), 51.165 (NNSR); O.A.C. 3745-31-01(JJJ), (TTT).

That increases or decreases in pollutant emissions at a source may not be counted in the netting analysis unless they are “contemporaneous with the particular change . . . and otherwise creditable.” O.A.C. 3745-31-01(TTT)(2); see also 40 C.F.R. §§ 51.165(a)(6)(A)(ii) & 51.166(b)(3)(i)(b). Under the Ohio rule as currently written, an increase or decrease “is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.” O.A.C. 3745-31-01(TTT)(3)(a).

The plain language of these provisions clearly establishes that the contemporaneous period begins to run on the date that emissions increases or decreases actually occur, and that the period continues to run until construction of the proposed change actually commences. Consistent with this plain meaning, the First Circuit Court of Appeals has held, in a case in which US EPA was the permitting authority, that the five-year contemporaneous period provided for by the applicable regulations should be strictly construed, and that the submission date of a permit application was “irrelevant” to defining that period. *Puerto Rican Cement Co. v. U.S. Env'tl. Prot. Agency*, 889 F.2d 292, 300 (1st Cir. 1989). This plain meaning has been further confirmed numerous times in US EPA guidance. Letter from S. Riva, Chief of Permitting, EPA, to H. Alejandro, Puerto Rico Electric and Power Authority (June 10, 2002) (five-year period moves forward with time and is not “frozen” by issuing a permit, let alone submitting a permit application); Mem. from J. Calcagni to D. Kee re Cyprus Mining (Aug. 11, 1992) (five-year period begins when reduction occurs and emissions actually decrease, not “when the source elects to take credit for it”); Mem. from E. Reich, Director, EPA Division of Stationary Source Enforcement, to M. Hohman (Apr. 1, 1981) (five-year period determined to start when a boiler shut down, not when a permit made the shutdown enforceable); see also Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 45 Fed. Reg. 52,676, 52,701 (Aug. 7, 1980) (noting that the five-year contemporaneous period should be defined consistent with a ‘common sense notion of what is “contemporaneous,” since a period of contemporaneity must have some definite boundaries”).

The draft rule change to the definition of “net emissions increase” would modify the current rule by creating an open-ended expansion of the definition of the contemporaneous period for netting purposes. The draft rule change would define an increase or decrease as contemporaneous if it is “within the period beginning five years prior to the date on which the owner or operator of the facility submits an initial complete application for an installation permit for a new and/or modified emission unit(s) for the particular change or project, and ending on the date on which the owner or operator has identified in their initial application as the date that the new and/or modified emissions unit(s) are scheduled to start operating.” Draft O.A.C. 3745-31-01(VVV)(3)(a).

This draft rule change is inconsistent with minimum federal requirements for approvable state NSR programs in US EPA regulations. See 40 C.F.R. §§ 51.165(a)(6)(A)(ii) & 51.166(b)(3)(i)(b). Instead of establishing a five-year period with “definite boundaries,” as contemplated by US EPA, the draft rule change

would allow a permit applicant discretion to decide when the contemporaneous period for its netting analysis begins and ends.

Furthermore, the draft rule change appears calculated to influence an administrative appeal of an air permit-to-install that is currently pending before the Environmental Review Appeals Commission: *SunCoke Watch, et al. v. Korleski*, ERAC Case Nos. 096268-096285. In that proceeding, the Middletown Coke Company is seeking to take credit in its netting analysis for emissions decreases that occurred outside of the five-year contemporaneous period established by the current rule. See Exhibit A (September 2008 comments of Sierra Club, NRDC, and SunCoke Watch Inc. on the draft permit). To the extent that Ohio EPA is now advancing this draft rule change for the purpose of clearing a legal obstacle to the approval of a Middletown Coke Company facility that would not otherwise be approvable, such a purpose would be improper and contrary to Ohio EPA's mission to protect public health and the environment from harmful pollution. **(Thomas Cmar and Shannon Fisk on behalf of NRDC, Sierra Club and SunCoke Watch Inc.)**

Regarding the revised definitions in OAC Chapter 3745-31-01: The new definition for the contemporaneous time period (31-01, old TTT new VVV (3)(a)) is "within the period beginning five years prior to the date on which the owner or operator of the facility submits an initial complete application for an installation permit for a new and/or modified emission unit(s) for the particular change or project, and ending on the date on which the owner or operator has identified in their initial application as the date that the new and/or modified emissions unit(s) are scheduled to start operating."

It is unclear what happens if the application does not indicate a date when operations will start. If the application indicates a date but the date is missed, it is not clear if the contemporaneous time period remains fixed. It is unclear if there is a limit to how far in the future the start-operations date can be set in the application. **(Rich Angelbeck on behalf of Region V)**

The commenter states that this subparagraph addresses the period of time in which increases or decreases of actual emissions are considered to be "contemporaneous". The draft amended language provides that the end of the period is the date "the owner or operator has identified in their initial application as the date" for commencement of operation of the new or modified source. That date is subject to change as the application is being considered, due to changes in business planning or through delays in the processing of the application. We suggest deleting that quoted language and inserting language indicating that the end of the period is the date of commencement of operation as authorized by the permit for installation of the new or modified source. Using that approach, the last three lines of the paragraph would be replaced by language to read, "and ending on the date the new source or the source after being modified begins operation under the permit." **(Robert Brubaker and David Northrop on behalf of the Ohio Chamber of Commerce, Ohio Chemistry Technology Council and Ohio Manufacturers Association)**

In subparagraph (3)(a), we think the end date for the "contemporaneous" period should not be changed from "the date that the increase from the particular change occurs." **(Robert L. Brubaker and Eric B. Gallon on behalf of**

numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)

The definition of “net emissions increase” in OAC 3745-31-01(VVV) is being changed so that the 5-year contemporaneous time period is based on when an initial complete application is received and when the application projects operation to commence. 40 CFR 51.166(b)(3)(ii) allows a State to define a reasonable period within which an increase or decrease in actual emissions is deemed contemporaneous with a particular change. However, the revised definition may allow the applicant to unreasonably extend the contemporaneous time period by amending the application to postpone the date of operation. Therefore, before submitting this rule as a revision of Ohio’s State Implementation Plan (SIP), we recommend amending it so that the beginning of the 5-year contemporaneous time period is reset whenever the application is modified. **(Genevieve Damico, Chief, Air Permits Section, U.S. EPA Region 5)**

The Utilities support the revision to the definition of net emission increase in OAC rule 3745-31-01(VVV). **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies (“the Utilities”))**

Response 10:

The “net emissions increase” definition has been a part of federal and Ohio rule and law for many years. It is designed to help determine when a particular air pollution project is large enough to qualify for the applicability of Major New Source Review (Major NSR) rules. These rules are generally more stringent than Ohio rules for minor sources. Ohio EPA worked from the federal definition for “net emissions increase” when we developed our rules and U.S. EPA developed the definition initially in response to the Clean Air Act requirements.

The part of the definition that Ohio EPA is proposing to change concerns the time period that permittees must use to determine recent increases and decreases of emissions. Any non exempt increases and decreases in emissions must be included with the emissions increases associated with the project under consideration to determine if the net amount of emission is large enough to trigger the applicability of Major NSR. This time period is intended to restrict the inclusion of increases and decreases to only “contemporaneous” events and was mainly intended to make sure reasonable progress to attainment is achieved for projects in non attainment areas. These rules define what is considered to be “contemporaneous”.

Unfortunately, as multiple commenters have pointed out, the current definition has been interpreted in multiple ways. This has resulted in multiple interpretation letters or positions from U.S. EPA and has resulted in several court decisions about these different interpretations.

The main problem with the current definition is that the contemporaneous starting and ending time is based on events that are not static. The beginning of the contemporaneous period is currently based on when construction of the project begins. Unfortunately, for anything but the simplest of projects (which don’t often emit enough to trip Major NSR), the construction date of a project changes with time. When permittees are planning a project, they will have an expected

construction start time; when they submit a permit application, they will have a slightly more accurate expected construction start time; when they get a final permit, they will often have to adjust their expected construction start time; and then many other events could occur that could further change the construction start time. Since the expected construction date of a project changes with time, this means that the beginning of the contemporaneous time period could also logically be interpreted to change with time.

The same thing can happen with the contemporaneous ending time. For many of these projects, the start-up date is even more difficult to predict accurately than the construction start time.

Having a variable contemporaneous period makes this part of Major NSR applicability analysis very confusing to not only those who have to make these applicability decisions, but also to all interested parties who are trying to determine if the analysis was done right. In order to simplify this analysis, Ohio EPA has proposed to revise the definition such that the contemporaneous start and end dates are based on static events, not variable events. The goal of this change is to simplify the determination without changing the intent of the underlying rules and law.

Under the draft proposal, Ohio EPA proposed setting the beginning of the contemporaneous period to be based on the date the facility submits their initial complete permit application. Some commenter's objected to the use of this date because it was not consistent with the past rule, which is based on the beginning of construction. Although we feel we have the latitude to use the date of receipt of the application, we decided to change the contemporaneous beginning date to be based on the date the applicant believes construction will start at the time they submit their initial application. By basing this date on the expected construction date, it will be more consistent with other State and Federal program, thus minimizing state-to-state confusion.

However, in order to eliminate the sliding contemporaneous period due to delays in construction, Ohio EPA is basing the beginning of the contemporaneous period on the date the permittee plans to start construction. This date will be based on the best knowledge of the permittee when they first apply for a permit as identified in their initial application. We chose the *initial* application start construction date because it is fixed and will not change even if a later updated application is submitted. We also chose to require the application to be complete in order for the date to be set. If the application is not complete, then the submittal cannot be used to set the beginning of the contemporaneous period.

Ohio EPA currently undertakes a preliminary completeness review of all installation applications. We intend to use this process to verify the completeness of the application. This process checks to see if all needed data has been submitted and that all forms have been filled out.

Also, under this proposal, Ohio EPA is setting the end of the contemporaneous period to be based on the date the facility believes the new or modified air pollution sources are expected to start operating. The facility indicates this date in the application. Ohio EPA would have the ability to verify this date based on a

review of company project planning records. This date is based on the projections known at the time of submittal of the permit application and would not change if project schedules slip. Under this proposal, the end of the contemporaneous period would be fixed and would not change with time, even if a revised application is submitted. The end date corresponds to the date listed in the *initial* application as stated in the revised rule, not the construction date listed in any subsequently modified applications.

The single biggest advantage of this approach is the certainty it would give to all interested parties concerning the contemporaneous period. The contemporaneous period would be fixed once a complete application is submitted. Ohio EPA believes this is a much better approach than the current language in the rule that allows for multiple interpretations of and a shifting time period for the contemporaneous time period.

This revised approach is also consistent, in general, with U.S. EPA's rule with the exception that under U.S. EPA's rule, logical people could interpret the contemporaneous period to shift if construction or the beginning of operation shifts, whereas, under the Ohio rule, these dates are fixed once a complete application is submitted.

Response to Specific Issues

Question: Isn't this rule going to be different from the currently approved State Implementation Plan (SIP) rule approved by U.S. EPA?

Answer: Yes, anytime Ohio EPA changes a rule that is a part of the SIP, until the revised rule gets approved, there is a conflict between the two versions. Ohio EPA will provide guidance to interested parties concerning the use of the revised rule until such time as U.S. EPA approves the revised rule.

Question: Doesn't this change remove the relationship between what the facility is actually permitted for and the actual emissions reduction / increases.

Answer: This change only affects the applicability determination for major NSR. It does not change the allowed emissions for a particular source nor does it change the methods used to determine the allowed emissions.

Question: If the actual start of construction changes and/or the actual begin operation time changes, shouldn't the contemporaneous time period change too?

Answer: Under this revised rule, changes in the construction start or the operation start would not change the contemporaneous time period. Ohio EPA believes that neither congress, when they wrote the CAA, nor U.S. EPA, when they wrote the federal rules, intended the law or rules to require a changing contemporaneous period. Instead, it is clear to Ohio EPA that the decisions on major NSR applicability are intended to be made during the permit development/review process. Otherwise, the permit could not be processed until operation of the new or modified facility was begun because that is the only time that the contemporaneous period would be known. This is an absurd result because it is clear the permit must be issued before construction can begin.

Question: Does this proposed change impact any opportunity for interested party comment on the permit?

Answer: No, this does not change the current process used to allow for interested party comment.

Question: Is this change going to impact the ability of the State to get to and maintain attainment of the National Ambient Air Quality Standards (NAAQS)?

Answer: No. This approach is really no different than Ohio EPA has interpreted the rule in the past. It does not impact the plans Ohio EPA puts together to reach and maintain attainment.

Question: Will this change apply to permits already issued?

Answer: No. This change only applies to permits issued on or after the applicability date of the revised rule.

Question: Does this proposal allow companies to use shutdown emission credits they would not be able to use under the old rule?

Answer: In most cases, the contemporaneous period would be the same as under the old rule and so no additional credits could be used. However, depending upon how the old rule is interpreted, there could be cases where emissions decreases (credits) or emissions increases (new or modified projects) could be included in the contemporaneous period that would not be included under the revised rule. This could mean that under the revised rule a project could trip major NSR that before would not; this could also mean that a project could be exempt from major NSR that before would not. Either case could happen depending upon the particular circumstances for the project. Overall, this change would neither increase nor decrease the stringency of the permit program.

Question: Is this draft rule change calculated to influence an administrative appeal of an air permit-to-install that is currently pending before the Environmental Review Appeals Commission: *SunCoke Watch, et al. v. Korleski*, ERAC Case Nos. 096268-096285.

Answer: No. This draft rule change does not apply to the permit subject to the above referenced appeal.

Question: What happens if the applicant fails to indicate the date they plan to start construction within the permit application.

Answer: Then the application would not be considered complete, the contemporaneous period could not be set, and Ohio EPA could not determine the applicability of major NSR. In that case, the applicant would have to submit a revised application that included the operation start date. Once that revised, complete, application is submitted, then the contemporaneous date can be set.

Question: Is there a limit to how far in the future the start-operations date can be set in the application?

Answer: Applicants will need to set the start-operations date using their own planning information. The actual time period will vary greatly depending upon the time it takes to construct the project. Ohio EPA can check this information to make sure an honest date is chosen by a review of standard business planning records.

Question: Is this draft rule change consistent with minimum federal requirements for approvable state NSR programs in US EPA regulations? See 40 C.F.R. §§ 51.165(a)(6)(A)(ii) & 51.166(b)(3)(i)(b).

Answer: Yes, U.S. EPA specifically gave States the discretion to determine how they wanted to define the contemporaneous period. Both of these rules have language that allows increases or decreases in actual emissions to be creditable only if they occur within a reasonable period (*to be specified by the reviewing authority*). The “reasonable period” is the contemporaneous period that U.S. EPA has given the reviewing authority (States, Tribes or Locals) the latitude to define. See 40 C.F.R. 40 C.F.R. §§ 51.165(a)(iv)(C)(i) & 51.166(b)(3)(iii)(a).

Question: Why can't the end of the contemporaneous period be based on the expected date of commencement of operation as authorized by the permit for installation of the new or modified source?

Answer: This commenter discussed that the expected beginning of operation often changes during the permit process period and suggests that the end of the contemporaneous period should be based on the expected start operation date as know when the final permit is issued. Ohio EPA chose not to take this approach because it would require Ohio EPA staff to evaluate the contemporaneous period twice, once when they do their first evaluation, and, second, right before the final permit gets issued. This approach can result in a shifting contemporaneous period which is a result Ohio EPA is trying to avoid.

Comment 11: In OAC rule 3745-31-01(VVV) subparagraph (3)(e), the proposed new phrase “the following applies” is unnecessary and confusing, and grammatically flawed. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 11: As stated above, new phrasing to some of the rules was added to bring the agency more in line with the rule formatting conventions of the LSC and to create an agency wide standard. However, we agree that the change in this rule is grammatically flawed. The rule has been revised to read: “(e) A decrease in actual emissions is creditable only if the following applies:”

Rule 3745-31-01(XXX)

Comment 12: This paragraph, defining “new source review project” or “NSR project” should be revised by adding the following phrase to the end: “for which a permit to install is required under this chapter.” “NSR projects” subject to certain recordkeeping and reporting requirements under OAC Rule 3745-31-10 were never meant by

Ohio EPA to encompass projects that consisted solely of one or more de minimis sources or sources exempt from PTI requirements under OAC Rule 3745-31-03.

Response 12: The Ohio EPA is agreeable to adding language to the rule specifying that the documentation required for NSR projects under OAC rule 3745-31-10 applies only to projects for which an installation permit is required.

Rule 3745-31-01(QQQQ)

Comment 13: The commenter states that, we recognize that this definition of “permanent” is taken verbatim from OAC 3745-111-01, pertaining to the emission reduction bank. However, we feel that the definition should be altered both here and in that rule. If the definition is not changed for purposes of Chapter 111, which is a voluntary program, it should still be changed for Chapter 31, which is a mandatory program. The definition should be changed in two respects. First, a permanent shut-down of a source should be considered to be “permanent” even if that removal is not reflected in a “federally enforceable mechanism”. Second, although the phrase “federally enforceable” is defined at 31-01(SS), the phrase “federally enforceable mechanism” is not defined. Accordingly, we suggest that the definition be altered to read, “emission reductions used to offset increases that are assured for the life of the corresponding increase and are federally enforceable or result from the permanent shut-down of a source.” A permanent shut-down is inherently “federally enforceable” in that a source that is permanently shut down relinquishes its right to operate in the absence of federally enforceable new source permitting. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

The commenter states that the proposed new definition of “Permanent” is not needed or legally authorized. It is also unduly narrow. It excludes permanent emission reductions that are assured because higher emissions are no longer physically or operationally possible. It also excludes emissions that are no longer “potential” emissions due to restrictions that are legally and practically enforceable by the state, as provided in the exiting federally-approved OAC Rule 3745-31-01(VVVV) (definition of “Potential to Emit”). **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 13: Ohio EPA has considered the commenter’s suggestions on revising the “permanent” definition. The commenter first comments that “federally enforceable mechanism” should be changed to “federally enforceable” because there is no definition for the words “federally enforceable mechanism”. We do not agree with the commenter’s concerns on this account. Federally enforceable is a defined term in OAC rule 3745-31-01 and we believe the plain language meaning of “mechanism” is an appropriate interpretation. For clarification, we interpret the plain language meaning of mechanism as: “An instrument or a process, physical or mental, by which something is done or comes into being” [Answer.com]. We don’t think it is appropriate to create a definition for federally enforceable mechanism because that would limit Ohio EPA if any new types of

mechanisms could apply in the future to make ERCs federally enforceable. Based on these reasons we will not amend the federally enforceable mechanism language.

Secondly, the commenter asked to incorporate the language “permanent shut-down” within the definition of permanent because a permanent shut-down is inherently federally enforceable. When a source permanently shuts an emission unit or facility in Ohio EPA’s Air Services system, that emission unit or facility can no longer operate unless the facility obtains a new permit. In that sense when an emission unit is *permanently shutdown in our system* it is essentially permanent.

However, we think that including “permanent shut-down” within the “permanent” definition limits the scope of the definition and incorporating the word “permanent” within the definition of “permanent” will create confusion. First, the scope of permanent definition is larger than just a permanent shut-down; other permanent emission reduction activities should be included in this definition. Second, there is a long standing history of what does “permanent shut-down” mean and it would not be prudent for us to put language in a definition knowing that there is a malleable understanding of “permanent shut-down” amongst the regulated community. Based on these reasons, Ohio EPA declines to amend this definition in the proposed draft rule.

Ohio EPA disagrees that the definition of “permanent” excludes the emission reductions obtained in the manner described by the commenter, and that the definition is unduly narrow. A facility that wishes to use such emission reductions to offset emission increases can do so by first assuring such emission reductions are permanent by a federally enforceable mechanism such as a permit modification. The permit would be modified to show the new, lower allowable emissions. The modified permit serves as the federally enforceable mechanism by which the reductions are shown to be permanent.

Rule 3745-31-01(UUUU)

Comment 14:

This provision as drafted attempts to define three phrases in one definition. Each of the three should be defined in separate paragraphs in the same manner that “PM10” and “PM10 emissions” are currently defined. “PM2.5” should be defined using the language in the current definition of “PM10”, but substituting 2.5 for 10. “PM2.5 emissions” should be defined using the language in the current definition of “PM10 emissions”, but substituting 2.5 for 10.

The proposed definition of “PM2.5 direct emissions” should be changed in two ways. The first sentence can be more clearly stated as follows, “‘PM2.5 direct emissions’ means the primary particles emitted directly into the air as a solid or liquid particle, including those gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures, but do not include particles that form in the atmosphere as a result of chemical reactions.” In the second sentence, the references to “directly emitted sulfate” and “directly emitted nitrates” should be deleted as confusing, since these compounds often form in the atmosphere as secondary particles. **(Robert L. Brubaker and David E.**

Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)

Response 14: Upon our review of the Code of Federal Regulations, our rules and the commenter's suggestions, Ohio EPA will amend the PM2.5 emissions, PM2.5 direct emissions and PM2.5 definition to clearly reflect the different aspects of each term. Our changes will include:

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or an equivalent method designated in 40 CFR Part 53.

"PM 2.5 direct emissions" means solid particles, with an aerodynamic diameter less than or equal to nominal 2.5 micrometers, emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct PM2.5 emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material and metals)."

"PM2.5 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to nominal 2.5 micrometers that is or has been emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Part 51, Appendix M.

Comment 15: Why would Ohio EPA want or need to regulate emissions of "sea salt" under the definition of "PM2.5 direct emissions"? We are not aware of any emission unit in Ohio, or the prospect of any future emission unit in Ohio, that might emit "sea salt." Also the definition of "PM2.5 direct emissions" should be limited to "PM2.5" emissions that have the attributes of "direct" as defined. The current wording would include in the definition of "PM2.5 direct emissions" particles of any size. The proposal for the same definition of "PM2.5 direct emissions" or "PM2.5 emissions" as interchangeable terms in Paragraph (UUUU) is a mistake. The separate term "PM2.5 emissions" is defined by itself in the following proposed new Paragraph (VVVV). It should not be defined twice in the same rule in different ways. Finally, the paragraph is missing a ")" before the final period. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 15: Ohio EPA has considered the comments on (UUUU) and has revised the paragraph as follows:

"PM2.5 direct emissions" means solid particles, with an aerodynamic diameter less than or equal to nominal 2.5 micrometers, emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct PM2.5 emissions include elemental carbon, directly

emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material and metals)."

Rule 3745-31-01(YYYY)

Comment 16: Ohio EPA has revised their rules to be wholly consistent with this portion of EPA's 2008 NSR Rule, but has there been thought given to revising (YYYY) in the same way that (UUUU) was revised to define PM10 emissions as including condensables? **(Wei-an 'Andy' Chang, Environmental Engineer, EPA Region 5, Air and Radiation Division)**

Response 16: Ohio EPA has added language the following language to the definition of "PM10 emissions":
"or gaseous emissions that condense to form particulate matter at ambient temperatures."

Rule 3745-31-01(WWWW)

Comment 17: This definition is unclear as to whether it is meant to include compounds in addition to sulfur dioxide and nitrogen oxides as PM2.5 precursors. Since subsequent rules address only those precursors, a clearer definition would be, "PM2.5 precursors' means sulfur dioxide and nitrogen oxides." **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

The proposed definition of "PM2.5 precursor" is unreasonably and unjustifiably open-ended. It should not encompass all unnamed "air pollutants" that "contribute to the formation of PM2.5," a vague, unbounded and inherently unworkable non-definition. The definition should simply say: "PM2.5 precursor' means sulfur dioxide and nitrogen oxides." That way, it is consistent with proposed Paragraphs (NNNNN)(1)(c) and (2)(a) and (VVVVV)(1)." **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 17: Paragraph (WWW) adopts the PM 2.5 precursor definition found in 40 Code of Federal Regulation (CFR) Part 51 Subpart Z. The definition under the federal regulation states: "*PM_{2.5} precursor* means those air pollutants other than PM_{2.5} direct emissions that contribute to the formation of PM_{2.5}. PM_{2.5} precursors include SO₂, NO_x, volatile organic compounds, and ammonia".

We did not include VOC and ammonia in our definition because these would only be included if, as detailed in 40 CFR 51.166, we demonstrate to the EPA that emissions of these pollutants from sources in a specific area are a significant contributor to that area's ambient PM2.5 concentrations. No unnamed air pollutants can be presumed to be PM2.5 precursors unless EPA approves Ohio EPA's demonstration that they contribute to PM2.5 concentrations. We believe

we are consistent with the federal regulations, that the regulation is clear and therefore we will not be amending the sentence.

Rule 3745-31-01(JJJJJ)

Comment 18: The commenter states that although this definition of “quantifiable” is taken verbatim from OAC 3745-111-01, we believe that the definition should be changed both here and in that rule. If the definition is not changed for purposes of Chapter 111, which is a voluntary program, it should still be changed for Chapter 31, which is a mandatory program. The phrase at the end, “established by applicable law or approved by the director” is unnecessary, unduly narrow and should be deleted. The phrase “reliable and replicable method” is sufficient to assure that the emissions will be accurately quantified. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Response 18: We do not feel this definition unnecessary or unduly narrow; it defines what type of data Ohio EPA must receive in order to give the proper amount of Emission Reduction Credits (ERCs) to a facility generating ERCs for the purpose of offsets.

In terms of removing “established by applicable law or approved by the director” language, if ERCs are quantifiable then they would be approvable by the director based on principles of good engineering practice and practices established under applicable laws. We believe the approved by the director language implies this as a practical matter and will not be more burdensome than current practice. We appreciate your comments however; this definition will not be changed.

Rule 3745-31-01(KKKKK)

Comment 19: The proposed new phrase “following applies” in the first sentence should be “following apply.” In the alternative, the colon could be placed after “operation where” and the words “the unit” (and proposed new words “following applies”) could be omitted. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 19: Ohio EPA agrees and has revised “following applies” to “following apply.”

Rule 3745-31-01(LLLLL)

Comment 20: The proposed new phrase “the follow occurs” in the first sentence should be “following occur.” **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 20: Ohio EPA agrees and had revised the rule as suggested.

Rule 3745-31-01(NNNNN)

Comment 21:

Particulate matter is made of both “filterable” and “condensable” particulates. Both types fit within the definitions of PM, PM 10, and PM 2.5 and, therefore, must be included in the netting analysis and other regulatory evaluations of the proposed SunCoke plant. For example, Ohio’s current regulations define “particulate matter” as “any material, except water in uncombined form, that is or has been airborne, and exists as a liquid or a solid at standard conditions.” O.A.C. 3745-31-01(MMMM) & 3745-17-01(B)(13). “Particulate emissions” are defined as “particulate matter measurable by the applicable test methods in 40 CFR Part 60, Appendix A, ‘Standards of Performance for New Stationary Sources.’” O.A.C. 3745-31-01(NNNN) & 3745-17-01(B)(12). Both filterable and condensable particulates are “measurable” by Method 5, Method 201 (which measures filterable PM 10), and/or Method 202 (which measures condensable particulates) and, therefore, both types of particulates fit within the definition of particulate emissions and particulate matter under the current rule.

The draft rule change to the definition of “Regulated NSR pollutant,” however, would exempt condensable particulate matter from regulation until January 1, 2011. See Draft O.A.C. 3745-31-01(LLLLL). Ohio EPA appears to be relying on the US EPA final PM 2.5 NSR Rule to justify its decision to exempt condensable PM and PM 2.5 from regulation. See 73 Fed. Reg. 28,331-50 (May 16, 2008). Such reliance, however, is misguided for a number of reasons. First, the PM 2.5 NSR Rule is currently stayed by order of the Administrator of US EPA, who announced in a letter dated April 24, 2009 that the rule will be modified in a forthcoming rulemaking. See Exhibit B (Letter from US EPA Administrator Lisa P. Jackson to Paul R. Cort, dated April 24, 2009).

Second, while the PM 2.5 Rule purports to deregulate condensable particulate matter from permit emission limitations and netting analysis for PM 2.5 and PM 10, it did nothing to alter the requirements regarding PM as a whole. As such, the Rule does not provide a basis for ignoring condensables in calculating total PM.

Third, as noted above, Ohio’s SIP plainly defines particulate matter and particulate emissions to include both condensable and filterable particulates. Ohio EPA cannot just deregulate condensables through fiat. In fact, even the PM 2.5 Rule notes that US EPA will continue to require regulation of condensables where, as here, the applicable implementation plan requires such regulation. See 73 Fed. Reg. at 28,335. **(Thomas Cmar and Shannon Fisk on behalf of NRDC, Sierra Club and SunCoke Watch Inc.)**

Response 21:

Ohio EPA has amended paragraph (NNNNN) to require condensables to be accounted for in applicability determinations and in establishing emissions limitations for PM2.5 and PM10 in new source review permits. We have revised OAC rule 3745-31-01(NNNNN) to be consistent with federal regulation and the rule now states:

“PM2.5 emissions and PM10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing

emissions limitations for PM2.5 and PM10 in nonattainment new source review permits. Compliance with emissions limitations for PM2.5 and PM10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of a permit or the Ohio state implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this chapter unless the Ohio state implementation plan required condensable particulate matter to be included.”

Comment 22: In subparagraph (2)(a)(ii), the phrase “identified the the administrator” has a typographical error, but more importantly that phrase is not necessary or appropriate to include in the proposed rule. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 22: Ohio EPA agrees and has deleted the phrase from this rule.

Rule 3745-31-01(TTTTT)

Comment 23: OAC rule 3745-31-01(TTTTT) has a new definition for semi-public disposal system. The synopsis indicates that this new definition corresponds to a new exemption under OAC rule 3745-31-03. However, a review of the interested party rules indicates that there are no new revisions to OAC rule 3745-31-03. The Utilities seek clarification from Ohio EPA on this new definition as it is related to a “new” exemption and the Utilities reserve the right to further comment on this new definition once the Utilities receive this clarification. **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies (“the Utilities”))**

Response 23: Ohio EPA is currently revising OAC rule 3745-31-03 and new exemptions will be proposed when this rule goes out for interested party comment in the very near future. Ohio EPA will accept comments on this exemption and the definition in OAC rule 3745-31-01 at that time.

Rule 3745-31-01(UUUUU)

Comment 24: This definition of “significant air contaminant source” should list thresholds only for criteria pollutants. However, “particulate matter” appears in subparagraph (1)(a). That reference should be replaced by a reference to PM2.5 and PM10. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Response 24: Ohio EPA thanks the commenter for his suggestions. We revised the proposed rules to include PM10, PM2.5 and remove Particulate Matter.

Rule 3745-31-01(BBBBBB)

Comment 25: Although this definition of “surplus” is taken verbatim from OAC 3745-111-01, we believe that the definition should be changed both here and in that rule. If the

definition is not changed for purposes of Chapter 111, which is a voluntary program, it should still be changed for Chapter 31, which is a mandatory program. The language “are below allowable emission rates and are not relied upon in the Ohio state implementation plan” seems to be illogical. Since the SIP prescribes an allowable emission rate for a source, it is difficult to understand how emission reductions below an allowable emission rate could be “relied upon” by the SIP when it is not required by a SIP. The language “and are not relied upon in the Ohio state implementation plan” should be deleted.

Problems are also presented by the language “and are not relied upon in the . . . required attainment demonstration of the national ambient air quality standards.” This apparently refers to whether the reduced emissions were part of the information put into the attainment demonstration modeling. However, such modeling inputs are opaque and made without specific or actual notice to the affected owner and operator as to the information being input and its consequences. The affected owner and operator should be given the opportunity to object to the use of the owner/operator’s reductions for that purpose. Such an owner and operator should be given notice and allowed to argue, for example, that attainment can be demonstrated without reliance upon the owner/operator’s reductions in the modeling. Moreover, the language does not account for the situation where a reduction was placed in the model by error or inadvertence. We therefore suggest that first sentence of the definition read, “‘Surplus’ means emission reductions not required to be made below allowable emission rates under applicable law in order to demonstrate attainment of national ambient air quality standards, or that otherwise have not been determined by the Director, after notice to the owner and operator of the source and an opportunity provided to the owner and operator to comment, to be necessary to demonstrate attainment of national ambient air quality standards.” The second sentence need not be changed. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Response 25:

We appreciate the commenter’s concern. We’d like to point out that under paragraph (G) of rule 3745-31-24 we are incorporating language that states:

Credit for an emission reduction can be claimed to the extent that the director has not relied on it in issuing any permit under this chapter, or the state of Ohio has not relied on it in an attainment demonstration or demonstration of reasonable further progress.

This language comes directly from federal regulation. See 40 CFR 51.165 (a)(3)(ii)(G).

In addition, all attainment demonstrations and SIP submittals are required to go through a public comment period, therefore it is unnecessary for Ohio EPA to be redundant in this definition.

The commenter also suggests that emissions reductions...”which are below allowable emission rates and are not relied upon in the Ohio State Implementation plan or required attainment demonstration of the national ambient air quality standards...” should be amended. In response, Ohio EPA’s

intention is to say that emission reductions must be below allowable emission rates and, if applicable, are not relied upon in the Ohio State implementation plans...” We understand allowable emission rates are a part of the Ohio SIP, however, there may be other Ohio SIP requirements that are beyond allowable emission rates that may apply to determining if an emission reduction is surplus. In the event reductions are relied upon under the Ohio SIP then, emission reductions are not considered surplus.

Upon further review of the federal surplus requirements and commenter’s concerns we are proposing a new definition of surplus. The proposed language creates more clarity for how to determine if emission reductions are surplus all based on federal regulation:

- (BBBBBB) *"Surplus" means emission reductions made below an applicable source baseline which ~~are~~ conform to the following:*
1. *Are below ~~Below~~ allowable emission rates, ~~and;~~*
 2. *The state of Ohio has not relied on ~~it~~ the emission reduction in a required attainment demonstration of ~~the a~~ national ambient air quality standard ~~standards~~ or ~~the a~~ demonstration of reasonable further progress, ~~and;~~*
 3. *The director has not relied on ~~it~~ the emission reduction in issuing any permit under this chapter, ~~and;~~*
 4. *Is not required by any applicable laws.*

Emission reductions can be used for offsets or emission reduction credits to the extent allowed under state or federal law.

Rule 3745-31-01(DDDDDD)

Comment 26: The word “construction” in the proposed new phrase at the end of the definition of “Temporary source” should be changed to “operation.” **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 26: Ohio EPA has changed the word “construction” to “operation” as the commenter suggested.

Rule 3745-31-02, “Applicability, requirements, and obligations”

Rule 3745-31-02(A)(1)

Comment 27: The proposed language in rule 3745-31-02(A)(1) and 3745-31-02(A)(1)(c) where the language “any of the following” is added is pertinent and important to the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 27: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-04, "Applications"

Rule 3745-31-04(B)

Comment 28: The proposed language in rule 3745-31-06(I) is relevant to the rule and necessary for adherence to new federal requirements. **(Scott Bushbaum, Ohio Citizen Action)**

Response 28: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-04(C)

Comment 29: We request that the paragraph be amended to conform to the certification language pertaining to submissions required by the Title V program as set forth in OAC 3745-77-03(D). That certification requires the responsible official to "state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete". This language appears in the federal Title V rules, and is carefully drafted to allow the official to rely upon the work of others in preparing the submission, so long as the official conducts a "reasonable inquiry" sufficient to form a "belief" that the information is "true, accurate, and complete". This is far preferable to, and much more reasonable than, the current language in OAC 3745-31-04(C), which states that the official's signature is a "personal affirmation that all statements or assertions of fact made in the application are true and complete", when the signing official cannot possibly have personal knowledge of the truth or completeness of every factual detail in the application. This blunt and currently unrealistic language in 31-04(C) came into being in the early 1970's, long before the advent of the Title V permit program, when air permit applications were short and simple. The air permit application attestation language in Air Services should be consistent where possible. The attestation language for the PTI and PTIO program should be updated to conform to the language employed in the Title V program. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Response 29: Ohio EPA is taking the suggested change under advisement but will not be revising the rule at this time.

Rule 3745-31-06, "Completeness determinations, processing requirements, public participation, public notice, and issuance"

General Comments

Comment 30: We are pleased to see that DAPC has proposed to include FLM notification requirements that are similar to those found in the federal New Source Review (NSR) regulations. As you may be aware, the NPS has raised concerns several times in the past over the lack of these requirements in the current OAC, and has requested that DAPC rectify this issue. We view these proposed changes as a first and significant step towards resolution of our concerns. We are especially

interested in ensuring that these changes reflect the federal requirements to the greatest degree possible, consistent with the specific language in the OAC. It is with this in mind that we provide the following comments. Our comments may be better understood by reviewing the enclosure, which shows the NPS suggestions within the proposed OAC language itself.

We appreciate in advance your consideration of these comments and look forward to resolving our concerns with the OAC FLM consultation requirements. We believe resolution of these issues is essential to each of our agencies to effectively carry out our respective roles under the Clean Air Act. **(John Bunyak, on behalf of the National Park Service)**

Response 30: Ohio EPA appreciates the commenters suggestions and it is our hope to work with you and all commenters on making the federal land manager language consistent with federal requirements.

Rule 3745-31-06(I) – Federal Land Manager Notification Requirements:

Comment 31: The additions made to Ohio Administrative Code 3745-31-06 reflect specific text from the Code of Federal Regulations (CFR) concerning protection of visibility in Class I areas as part of new source review (40 CFR 51.307). We would like the Ohio Environmental Protection Agency, Division of Air Pollution Control to include text relevant to air quality related values beyond visibility. This includes:

1. Code of Federal Regulations, 40 CFR 52.21, general provisions for prevention of significant deterioration of air quality. This section is relevant to the Federal Land Managers (FLM) and their review role in the permitting process, including protection of air quality related values (AQRVs); and,
2. Concepts contained in the language of the guideline document, *"FEDERAL LAND MANAGERS' AIR QUALITY RELATED VALUES WORKGROUP (FLAG), Phase I Report"*:

"FLMs agree on the following definition of an AQRV: A resource, as identified by the FLM for one or more Federal areas that may be adversely affected by a change in air quality. The resource may include visibility or a specific scenic, cultural, physical, biological, ecological, or recreational resource identified by the FLM for a particular area."

The above definition is compatible with the general definition of AQRV that appears in the *Federal Register* (45 FR 43003, June 25, 1980). That definition includes visibility, flora, fauna, odor, water, soils, geologic features, and cultural resources. FLMs have the responsibility to identify specific AQRVs of areas they manage. To this end, FLMs further refine AQRVs beyond the above definition to be more site-specific (*i.e.*, area specific) by using on-site information. To the extent possible, the FLMs have identified specific AQRVs for many Class I areas. Site-specific AQRV lists are available on the respective Agency websites, or by contacting the Agencies directly. The FLMs also recognize that, ideally,

inventories should be developed for all Class I areas. The FLMs may identify additional AQRVs in the future as more is learned through science about the sensitivity of resources to air pollution.”

Addressing these concerns as part of the proposed changes would improve the Ohio State Implementation Plan, specifically related to Federal Land Manager notification and responsibility. **(Kent Connaughton, on behalf of USDA Forest Service Eastern Region)**

The proposed language is quite similar to the federal requirements found in 40 CFR 51.307, which outlines the NSR requirements for visibility protection. However, please note that the “affirmative responsibility” given to the FLM agencies under the Clean Air Act extends to all Air Quality Related Values (AQRVs), not just visibility. This is reflected in the language found in 40 CFR 52.21(p), which also outlines FLM notification requirements, but with respect to all AQRVs, including visibility. We suggest that DAPC revise this proposed language to include these additional requirements by replacing language such as “may impact *vistas* of any Class I area” and “may affect *visibility* in any Class I area” with “may affect a Class I area,” which is the language found in 40 CFR 52.21 (p).

The first paragraph, (l)(1) includes the phrase “that the director determines may impact”, which is not found in any federal regulation reference respecting FLM notification. The federal requirements simply state that the appropriate FLM must be notified of a proposed new source or a modification to an existing source of air pollution that “may affect any Class I area”. We request that DAPC remove this phrase from the OAC to more closely align with the federal requirements.

(l) Federal land manager notification requirements.

For purposes of new source review of any new major stationary source or major modification that ~~the director determines may impact vistas of~~ **impact** ~~of~~ **affect** any Class I area and would be constructed in an area that is designated attainment, nonattainment, or unclassifiable under 40 CFR 81.336, in any review under rule 3745-31-17 of the Administrative Code with respect to visibility protection and analysis of a Class I area, the following shall be provided for: **(John Bunyak, on behalf of the National Park Service)**

The commenter states that the first sentence in proposed rule (l)(1) contains the language “that the director determines”. This language provides for director’s discretion, and should be removed from the rule. We have identified, and have communicated to OEPA, that similar language in Ohio’s rule 3745-31-09(H)(2)(d) creates a problem that needs to be addressed. We now point out that this latest director’s discretion language creates a problem and should be removed from the proposed rule OAC Chapter 3745-31-06(l) (as well from 3745-31-09(H)(2)(d)). Director’s discretion provisions are problematic and are not approvable. Such director’s discretion language would allow a state to make a unilateral decision about potential impact in determining whether to inform the FLM about a proposed source, and that would interfere with the FLM’s independent responsibility to protect Class 1 areas. As always, EPA is willing to work with OEPA on mutually acceptable language for FLM notification.

The first sentence in proposed rule (I)(1) contains the word "vistas," where the federal rule at 40 C.F.R. 51.307(a)(1) uses the word "visibility". We ask that Ohio remove the word "vistas" or replace it with the word "visibility". The Clean Air Act gives FLM's an affirmative responsibility to protect the Air Quality Related Values (Sect. 165 (d)(2)(b)), and Ohio must give affected FLM's notice providing them an opportunity to carry out this duty where appropriate. **(Rich Angelbeck on behalf of Region V U.S. EPA)**

The second paragraph, (I)(1)(a), states: "*Any notification sixty days prior to the public hearing may be waived with written approval from all affected federal land managers.*" It appears that this phrase is intended to address circumstances where the FLM has determined in advance that a Class I analysis is not necessary; however we believe this should be clarified. If our interpretation is correct, we agree it is appropriate to include such a statement in the OAC, but suggest that it is moved to the end of the paragraph and reworded to indicate that this "FLM waiver" must occur in advance of the 60 day notification period. Our suggestions for rewording are below.

(a) Written notification to all affected federal land managers of any proposed new major stationary source or major modification that ~~the director determines may affect visibility in any~~ may affect any Class I area. Such notification shall be made in writing and include a copy of all information relevant to the permit application, including the complete application, staff analysis, preliminary determination and any materials used in making that determination, within thirty days of receipt of and at least sixty days prior to the public hearing held by the Ohio environmental protection agency on the application for an installation permit. ~~Any notification sixty days prior to the public hearing may be waived with written approval from all affected federal land managers.~~ Notifications under this paragraph shall include an analysis of the anticipated impacts on visibility in any Class I area. ~~Required notification may be waived with written approval from all affected federal land managers in advance of the sixty day review period prior to the public hearing;~~ **(John Bunyak, on behalf of the National Park Service)**

The last sentence in proposed (I)(1)(a) beginning with the words "Any notification sixty days prior": We do not understand the origin of this language and why it is in this proposed rule. We request that Ohio explain this language and its purpose, or eliminate it from the proposed rule. **(Rich Angelbeck of Region V. U.S. EPA)**

The commenter states that the proposed language is quite similar to the federal requirements found in 40 CFR 51.307, which outlines the NSR requirements for visibility protection. However, please note that the "affirmative responsibility" given to the FLM agencies under the Clean Air Act extends to all Air Quality Related Values (AQRVs), not just visibility. This is reflected in the language found in 40 CFR 52.21(p), which also outlines FLM notification requirements, but with respect to all AQRVs, including visibility. Our suggested revisions are below.

(b) Where advance notification is received by the Ohio environmental protection agency (e.g. early consultation with the source prior to submission of the application or notification of intent to monitor under rule 3734-31-14 of the

Administrative Code) of a permit application for a source that may affect **visibility any Class I area**, the Ohio environmental protection agency shall notify all affected federal land managers no later than thirty days after such advance notification; and

(c) ~~Consideration~~—~~The director shall consider of~~ any analysis performed by the federal land manager, provided within thirty days of the federal land manager application notification and analysis required under paragraph (I)(1)(a) of this rule, that such proposed new major stationary source or major modification may have an impact on visibility in any Class I area.

Where the director finds that such an analysis does not demonstrate to the satisfaction of the director that an impact on visibility will result in a Class I area, the Ohio environmental protection agency shall either provide an explanation of the finding or give notice as to where the explanation can be obtained in the notice for the public hearing. **(John Bunyak, on behalf of the National Park Service)**

Response 31: Based on the commenter’s concerns from the first comment period, Ohio EPA amended OAC rule 3745-31-06(I) and sent the rule out for a second comment period. The only comment received in the second comment is shown as Comment 32.

Comment 32: The proposed language in rule 3745-31-06(I) is relevant to the rule and necessary for adherence to new federal requirements. **(Scott Bushbaum, Ohio Citizen Action)**

Response 32: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-07, “Termination, revocation, expiration, renewal, revision and transfer”

Rule 3745-31-07(A)(1)

Comment 33: The proposed change in the language of rule 3475-31-07(A)(a) where the word “source(s)” is proposed to word “source’ is unnecessary and misrepresentative of the rule. The language of the rule as currently worded with respect to the word “source(s)” in singular or plural form is relevant. **(Scott Bushbaum, Ohio Citizen Action)**

Response 33: In accordance with the Ohio Legislative Service Commission’s Rule Drafting Manual (2006), the rule language has been revised to be written in the singular. Please note that this revision has no impact on the enforceability of the rule since the singular includes the plural as well.

Rule 3745-31-07(B)

Comment 34: The proposed change in the language of rule 3745-31-07(B)(2) where the word “variance” is added is relevant and necessary to the rule. The proposed change in the language of rule 3745-31-07(B)(5)(a) where the words “any of the following

occur” is relevant and important to rule 3745-31-07. **(Scott Bushbaum, Ohio Citizen Action)**

Response 34: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-08, “Registration status permit-to-operate”

Rule 3745-31-08(B)(2)

Comment 35: The proposed changes to rule number 3745-31-08(B)(2) where the word “chapter(s)” and the words “and/or” are omitted for the language “Chapter” and the word “or” is unnecessary and irrelevant. The words “and/or” provide a more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 35: In accordance with the Ohio Legislative Service Commission’s Rule Drafting Manual (2006), the rule language has been revised to be written in the singular. Please note that this revision has no impact on the enforceability of the rule since the singular includes the plural as well.

Ohio EPA has amended the language of the rule to more accurately reflect the Agency’s intent. In instances in which more than one item is required, “and” has been utilized. For places where persons may select a single option, the term “or” will be used, this does not preclude them from selecting more than one.

Rule 3745-31-08(D)

Comment 36: The proposed change in the language in rule number 3745-31-08(D) where the words “and/or” is changed to “or” is unnecessary. The words “and/or” provide a more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 36: Ohio EPA has amended the language of the rule to more accurately reflect the Agency’s intent. In instances in which more than one item is required, “and” has been utilized. For places where persons may select a single option, the term “or” will be used, this does not preclude them from selecting more than one.

Rule 3745-31-09, “Variances on operation”

Rule 3745-31-09(A)

Comment 37: The proposed changes to rule 3745-31-09(A) where the word “and” is omitted is important and provides a more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 37: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-09(C)

Comment 38: The proposed changes to rule 3745-31-09(C)(d)(iii)(d) where the word “and” is omitted and the proposed change to the language to rule 3745-31-09(C)(2)(iv)(a) where the word “and” is omitted are relevant and provides a more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 38: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-09(F)(1)

Comment 39: The proposed changes to rule 3745-31-09(F)(1)(a) and (b) where the word and punctuation “,and” are omitted and the language “the following occurs” is added are relevant to the rule and provide a more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 39: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-09(F)(2)

Comment 40: We suggest two changes for clarity. First, in the last two lines, “any change in the final compliance date” should be “any extension of the final compliance date”. There is no need to obtain the Administrator’s approval of a reduced compliance schedule. Also, at the end, the period should be replaced by a comma, and the following clarifying language added, “but shall not include the reduction in allowable emissions.” Again, approval by the Administrator is not necessary in such circumstances. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Response 40: Based on commenters concerns, Ohio EPA will amend this paragraph in the proposed rules as follows:

If a variance has been approved by the administrator pursuant to paragraph (F)(1) of this rule, a renewal of such variance shall not be subject to the requirements of paragraph (F)(1) of this rule unless a significant difference exists between the material aspects of such variance and the renewed form of such variance. For the purposes of paragraph (F)(1) of this rule, a significant difference shall include ~~any change in the final compliance date~~ any extension of the final compliance date of any compliance schedule, but shall not include the reduction in allowable emissions.

Rule 3745-31-10, “NSR projects at existing emissions units at a major stationary source.”

Comment 41: When OAC rule 3745-31-10 was originally promulgated, the rulemaking record reflected Ohio EPA’s intent that pre-construction notifications under paragraph

(A)(2) are required if: 1) the project-related potential to emit exceeds baseline actual emissions by more than the significance level for an NSR regulated pollutant; or 2) the project otherwise requires a permit to install. The rule language is not as clear as it could be in carrying out the Agency's stated intent. We recommend that OAC rule 3745-31-10(A)(2) be revised as follows (new language underlined and bold):

"(2) Before beginning actual construction, regardless of whether the owner or operator determines there is a reasonable possibility that a NSR project **that requires a permit to install under this chapter and** that is not part of a major modification may result in a significant emissions increase, the owner or operator shall provide a copy of the information set out in paragraph (A)(a) of this rule to the director for any of the following:"

In addition, we recommend a new paragraph (C) to be added to OAC rule 3475-31-10, to mirror the federal "reasonable possibility" reporting criteria, as follows:

(C) "Reasonable possibility" under this rule occurs when the owner or operator calculates the project to result in either:

(1) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraphs (VVVVV) and (WWWWW) of this rule (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(2) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (GGGGG)(3) of this rule, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraphs (VVVVV) and (WWWWW) of this rule (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (C)(2) of this section, and not also within the meaning of paragraph (C)(1) of this section, then provisions (A)(3) through (A)(5) do not apply to the project. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Ohio EPA's provision regarding "reasonable possibility" could be construed to be more restrictive than the federal rules (40 CFR Part 51.165(a)(6)(vi)). The Utilities recommend that Ohio EPA revise this section to clarify and make it consistent with federal regulations. **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies ("the Utilities"))**

Response 41:

The Ohio EPA is agreeable to adding language to the rule specifying that the documentation required for NSR projects under OAC rule 3745-31-10 applies only to projects for which an installation permit is required.

We also agree that defining "reasonable possibility" helps to clarify the circumstances under which the documentation, monitoring and record keeping described in OAC rule 3745-31-10 would be required. We have revised the rule as suggested, and to be consistent with federal regulation.

Comment 42: The proposed omission of the word “and” to rule 3745-31-10(A)(1) and (5)(b) is relevant and adds further protection to the language of the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 42: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-11, “Attainment provisions – ambient air increments, ceilings and classifications” and Rule 3745-31-13, “Attainment provisions – review of major stationary sources and major modifications, stationary source applicability and exemptions”

Comment 43: The draft rule changes to OAC 3745-31-11 and OAC 3745-31-13 simply adopt the PM 10 increments and significant monitoring concentrations (“SMCs”) for PM 2.5. See Draft O.A.C. 3745-31-11(B) & 3745-31-13(H)(1)(k). This draft rule change is arbitrary and unlawful, because it ignores the differences between the PM 2.5 and PM 10 NAAQS and would be less stringent than the PM 2.5 increments proposed by the US EPA. US EPA, *Proposed Rule: Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers – Increments, Significant Impact Levels, and Significant Monitoring Concentrations*, 72 Fed. Reg. 54,112 (Sept. 21, 2007). Ohio EPA must revise its proposal to reflect the fact that the annual and 24-hour NAAQS for PM 2.5 are more stringent than those for PM 10 by adopting significantly lower PM 2.5 increments and SMCs than those that are proposed.¹

Increments are designed to limit the amount of degradation of air quality that a proposed major source of air pollution can cause in any area that is currently in attainment of the NAAQS for any particular pollutant. By preventing a source from exceeding applicable increments, the increment requirements help to protect air quality and public health in attainment areas and help ensure that attainment areas do not fall out of attainment. In order to achieve this goal, however, the increment must be set at a level that allows for room between the total increment that can be consumed and the applicable NAAQS for each pollutant.

Unfortunately, Ohio EPA’s proposal to simply adopt the PM 10 increments as those for PM 2.5 does not achieve this purpose. For example, Ohio EPA is proposing Class II PM 2.5 increments of 17 µg/m (annual) and 30 µg/m (24-hour), which would mean that the annual increment would be higher than the annual PM 2.5 NAAQS of 15 µg/m, and the 24-hour increment would be almost as high as the 24-hour PM 2.5 NAAQS of 35 µg/m. By contrast, US EPA has proposed three possible approaches to identifying the PM 2.5 increments, which lead to proposed Class II annual increments of 4 µg/m or 5 µg/m, and a proposed 24-hour increment of 9 µg/m. 72 Fed Reg at 54,136-37. In so doing,

¹ While Ohio EPA apparently has not proposed PM 2.5 Significant Impact Levels (“SILs”) for determining when interactive PM 2.5 air quality modeling is needed, the same logic regarding increments and SMCs applies to establishing SILs. Namely, given that the annual and 24-hour PM 2.5 NAAQS are much lower than those for PM 10, air quality would not be adequately protected if Ohio EPA simply used the same SILs for PM 2.5 and PM 10. Instead, Ohio EPA should set an annual PM 2.5 SIL of 0.3 µg/m and a 24-hour PM 2.5 SIL of µg/m.

US EPA considered an additional approach that would have lead to an annual PM 2.5 increment of 13 µg/m, but deemed that to be an “unreasonable outcome” given that it is 87% of the annual NAAQS for PM 2.5. *Id.* at 54,137 n.17. Ohio EPA’s proposal is even more unreasonable and must be revised to propose PM 2.5 increments that are at least as stringent as those proposed by US EPA.

Ohio EPA’s proposal to adopt the PM 10 SMCs for PM 2.5 is flawed for the same reason. The SMCs are designed to allow for a limited exception to the general requirement that a proposed major source must collect 1 year of pre-construction air quality monitoring data as part of a permit application by exempting sources whose emissions would be low enough that there is little doubt that they would not cause or contribute to a NAAQS exceedance. Given that the PM 10 NAAQS are much higher than the PM 2.5 NAAQS, an approach that uses the same threshold of 10 µg/m for both of those pollutants would improperly exclude PM 2.5 sources that may have a significant air quality impact from pre-construction air quality monitoring. While US EPA has proposed 10 µg/m as one possible SMC for PM 2.5, that agency has also identified SMCs of 8 µg/m and 2.3 µg/m as reasonable. 72 Fed. Reg. at 54,141. In order to ensure that air quality is adequately protected from sources of PM 2.5, Ohio EPA should adopt the 2.3 µg/m SMC level. **(Thomas Cmar and Shannon Fisk on behalf of NRDC, Sierra Club and SunCoke Watch Inc.)**

Response 43: Ohio EPA has adopted the SILs and SMCs for PM2.5 as finalized by US EPA on October 20, 2010 (75 FR 64964), which addresses the suggested SILs and SMCs for PM2.5 by the commenter.

Rule 3745-31-11(B)

Comment 44: To be consistent with Ohio EPA’s other stylistic changes, “µg/cm” should be changed to “µg/m³” in the legend for the table in paragraph (B). **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 44: Ohio EPA will revise the rule as the commenter suggests.

Rule 3745-31-11(D)

Comment 45: The proposed omission of the word “and” in rules 3745-31-11(D)(1)(c) and (D)(4)(a) is relevant and important to the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 45: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-11(E)(1)

Comment 46: The proposed omission of comma punctuation and addition of period punctuation and the omission of the words “and” and “or” is relevant and important to the rule.

The proposed changes remove connections between the subsets that quantify the rule unnecessarily. **(Scott Bushbaum, Ohio Citizen Action)**

Response 46: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-11(F)(2)(d)

Comment 47: The proposed changes in punctuation and language in this rule where commas are omitted and periods added and the word "and" is omitted are relevant and proved a better, more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 47: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-12, "Attainment provisions - data submission requirements"

Comment 48: The proposed changes to punctuation and language in paragraph (D) are important and relevant to the rule. The omissions and additions serve to clearly define one subset from the other and provide more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 48: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-13, "Attainment provisions - review of major stationary sources and major modifications, stationary source applicability and exemptions", and

Rule 3745-31-16, "Attainment provisions - major stationary source impact analysis"

Comment 49: On January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit granted a request from EPA to vacate and remand to EPA the portions of two PSD PM_{2.5} rules (40 CFR 51.166 and 52.21) addressing the Significant Impact Levels (SILs) for PM_{2.5}. The Court also vacated the parts of these two PSD rules establishing a PM_{2.5} Significant Monitoring Concentration (SMC). OAC 3745-31-13 and 3745-31-16(C) incorporate SILs and SMCs which were vacated. EPA has advised States to avoid incorporating language in State regulations that is the same as or has a similar effect as the paragraph (k)(2) language in 40 CFR 51.166 and 52.21. As a result of the Court's decision, the EPA does not believe it can approve the portion of any SIP submission that is identical, or substantially similar, to the vacated (k)(2) regulatory text, but EPA may approve the remainder of the SIP submission where it is appropriate to do so. Similarly, any rules submitted for approval into the SIP should not include the PM_{2.5} SMC, which the Court's decision found inconsistent with the Clean Air Act. **(Genevieve Damico, Chief, Air Permits Section, U.S. EPA Region 5)**

Response 49: Ohio EPA is aware of the Court decision and will await further rulemaking and guidance from US EPA, and will make the necessary changes to the rules before submitting the rules for SIP approval.

Rule 3745-31-13(D)

Comment 50: The proposed changes in punctuation and language in paragraph (D) are relevant and important to the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 50: Ohio EPA appreciates the commenter's support in our rule making changes.
Rule 3745-31-16(C)

Comment 51: We recommend that the word "is" be changed to "may be" in the first sentence of the proposed new language in Paragraph (C), in order to be consistent with the D.C. Circuit's decision in Sierra Club v. EPA, No. 10-1413, decided January 22, 2013. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 51: Ohio EPA is aware of the Court decision and will await further rulemaking and guidance from US EPA, and will make the necessary changes to the rule before submitting the rule for SIP approval.

Rule 3745-31-19, "Attainment provisions - notice to the United States environmental protection agency"

Comment 52: OAC Rule 3745-31-19(D) is being amended to include maximum allowable increases for PM2.5 and to revise the maximum allowable increase for particulate matter of diameter less than or equal to ten microns (PM10). The chart incorrectly lists the twenty-four hour maximum allowable increase for PM10 as 20 micrograms per cubic meter. The chart should be corrected to 30 micrograms per cubic meter, consistent with 40 CFR 52.166(p)(4). **(Genevieve Damico, Chief, Air Permits Section, U.S. EPA Region 5)**

Response 52: Ohio EPA will revise the rule as suggested.

Rule 3745-31-20, "Attainment provisions - innovative control technology"

Comment 53: The proposed changes to paragraph (B) of the rule where the words "governor(s)" and "state(s)" are proposed to the plural "governors" and "states" is unnecessary to the rule. The language as is currently written offers a singular and plural form of the two nouns that provide a clear, comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 53: In accordance with the Ohio Legislative Service Commission's Rule Drafting Manual (2006), the rule language has been revised to be written in the singular. Please note that this revision has no impact on the enforceability of the rule since the singular includes the plural as well.

Comment 54: The proposed changes in punctuation and omission of the word "or" and the addition of the language "do any of the following" to paragraph (B)(4)(a)(b) are relevant and important to the rule. The proposed changes serve to clarify the language of the rule and remove limitations of the language to provide a more

comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 54: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-21, "Nonattainment provisions - review of major stationary sources and major modifications - stationary source applicability and exemptions"

Comment 55: The proposed changes to paragraph (E)(4)(c) where punctuation is omitted and added and where the word "and" is omitted is relevant to the rule. These proposed changes remove the causal connection between the subsets and provide a more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 55: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-22, "Nonattainment provisions – conditions for approval"

Comment 56: The commenter suggests that it appears to be Ohio EPA's policy of changing OEPA rules to accommodate proposed industry in Ohio. We are most interested in the rule changes in 3745-31-22 that will affect the proposed Middletown Coke Company by giving the director the discretion to issue a permit before receiving pollution offsets from a company.

We feel that given the state of the air quality in Ohio and southwest Ohio in particular, the OEPA should be raising their standards for air quality and that industry should be investing in the technology to meet these raised standards. The specific circumstances of individual companies should not be dictating policy. Perhaps the OEPA should change their rules to let the circumstances of a community dictate policy by taking into account the placement of industrial polluters in relationship to schools when issuing permits. **(John and Sally Pearson, Middletown, OH)**

The commenter is in opposition to the following changes made in blue to 3745-31-22 (A)(5) for the following reasons:

- a. They remove the clarity of the existing versions of these rules that are part of Ohio's approved State Implementation Plan;
- b. They remove the relationship between what the facility is actually permitted for and the actual emissions reduction / increases.
- c. The initial application itself maybe be modified, due to business changes or other reasons and the emissions increase/decrease may actually be substantially more or less;
- d. The facility may or may not commence operations on schedule and may, in fact, actually operate sooner or later, resulting in substantial emission changes which are inconsistent with what may have been originally intended;
- e. There is no opportunity for the agency to concur with or grant permit conditions which are consistent with the 'initial' completed application;
- f. There is no public comment or review opportunity for the initial application or resulting decisions, including the decision of whether or not there is reasonable

further progress. These modifications eliminate an important public right to participate and comment. These modifications also eliminate the opportunity for the agency to learn information from the public. Further, there are no objective criteria upon which the director bases the proposed determination as to whether there is "reasonable further progress.";

- g. The modifications impede the ability of the agency to achieve and/or assure compliance with the National Ambient Air Quality Standards (NAAQS);
- h. There has been no demonstration that proposed changes will have not have on an adverse impact on the NAAQS in Ohio; and
- i. These modifications would make the Ohio law inconsistent with the existing approved SIP and the intent of the Clean Air Act.

It was certainly not the intent of the CAA to 'grandfather' emissions thru the netting process, based *anything*, put in the initial application, but to insure that the new permit was not going to contribute to air quality violations or unhealthy air. A netting process based on uncertain plans in an initial application that can be substantially modified at a later date simply fails to insure compliance with the NAAQS. If Ohio EPA adopts the proposed "netting process" Ohio EPA will be less certain about whether Ohio will actually achieve projected emission reductions. What will Ohio EPA do to address this problem?

Is it Ohio EPA's intent that this language apply to permits already issued or in the process of being issued?

Have these modifications been reviewed by U.S. EPA?

Reasonable further progress. Permits-to-install may be issued if the director determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the applicable nonattainment area(s), from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent reasonable further progress as defined in Section 171 of the Clean Air Act. **(Marilyn Wall on behalf of Sierra Club)**

Giving the director the authority to issue a PTI prior to a source securing sufficient emissions reduction offsets usurps a citizen's right to submit comments during the comment period and express disagreement during the public hearing process if deemed necessary. Leaving significant issues such as this to the sole discretion of the director undermines the checks and balances necessary during the permitting process for businesses, ensuring that applicable laws and rules are followed. Further, if a source is allowed to completely construct a facility up to the point of commencing operation, the source can then use the fact that they've fully constructed to manipulate the process to their advantage so that emission reduction offsets must be approved due to the expense incurred in a scenario like this.

Given that SunCoke/Middletown Coke Company has submitted their New Source Review application and, to date, has not submitted their emission offsetting plan

to legally comply with these requirements and that OEPA has now issued a draft rule, which would, in essence, allow the director to approve a permit prior to these being secured, raises serious concerns with the motivation driving this draft rule.

The health and safety of citizens should drive rules and laws, not the specific needs of business at the expense of communities.

Is there a federal law driving this specific draft language?

Also, in a scenario such as this, it appears that the mission of the EPA is to expedite the permitting and construction process for business, rather than ensuring that all laws and rules are followed and met prior to a PTI being issued and construction beginning. By issuing a permit under these circumstances, the director is giving the green light to construction prior to knowing beyond a shadow of a doubt that the offsets exist. By doing this, it seems the offsets are considered a "sure thing" prior to them being a "sure thing." That would be considered offsetting "credit" - using it before you actually have it. **(Lisa Frye President SunCoke Watch Inc.)**

The commenter states that she is certain that nonattainment means that the air quality is heavily polluted and that a Permit to allow industry that will pollute should be harder to obtain, not easier. However, the change would allow the director the discretion to issue a permit even before the company submits their pollution offsets.

This is just not right! Why should the director be allowed to issue a permit when a stipulation to the permit again should include offsets. This is not a minor omission from an application. Offset pollutants are crucial for our Air Quality not a second or lastly byproduct of that company to obtain.

In today's GREEN why would we want to lower standards? It appears so that a company such as Middletown Coke can submit their NSR application and get it through without submitting offsets. **(Barbara Stubbs)**

The draft rule change to OAC 3745-31-22 adds a new Subsection (A)(5) that purports to define Ohio EPA's discretion with respect to issuance of permits-to-install in nonattainment areas:

Permits-to-install may be issued if the director determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the applicable nonattainment area(s), from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent reasonable further progress as defined in Section 171 of the Clean Air Act.

Draft O.A.C. 3745-31-22(A)(5). The purpose of this draft rule change is unclear. Under Section 173 of the CAA, offsetting emissions reductions must be obtained

by the time the source is to commence operation . . . such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources . . . prior to the application for such permit to construct or modify so as to represent . . . reasonable further progress.

42 U.S.C. § 7503(a)(1)(A).

To the extent that the draft rule change to OAC 3745-31-22 is intended to give the Director discretion to issue a permit-to-install that is broader than the discretion contemplated by CAA Section 173, as well as US EPA's implementing regulations at 40 C.F.R. pt. 51, then it should be withdrawn or modified. However, to the extent that Ohio EPA intends the draft rule change to be interpreted identically to federal requirements, then we do not object to its promulgation. . **(Thomas Cmar and Shannon Fisk on behalf of NRDC, Sierra Club and SunCoke Watch Inc.)**

Response 56: The reasonable further progress paragraph comes directly from federal regulations. Specifically, Section 173 of the CAA and 40 CFR Part 51 Appendix S. Any rule that becomes effective will not affect any previous permits issued final by the director. US EPA has reviewed our rule package and provided comments in certain parts of this rule, and we have reviewed and addressed these comments.

After revision, this rule went draft once again and no further comments were received.

Rule 3745-31-22(B)(2)(a)

Comment 57: The proposed change in rule 3745-31-22(B)(2)(a) where the word "and" is omitted is relevant to the rule. The omission of the word "and" removes a connection between subset (a) and subset (b). **(Scott Bushbaum, Ohio Citizen Action)**

Response 57: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-24, "Nonattainment provisions – location of offsetting emissions"

Rule 3745-31-24(B)(1)(a)

Comment 58: The reference to pounds per hour should be deleted in favor of tons per year, which is the standard way of expressing emission offsets. Also, the paragraph is far longer than necessary. We suggest revising the paragraph to read, "Emission offsets are calculated on a tons per year basis. The baseline emissions shall be actual emissions as defined in rule 3745-31-01." **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Paragraph (B)(1)(a) appears to always require at least a pounds per hour basis for determining baseline, which would be arbitrary and inappropriate. This provision should be revised to clarify Ohio EPA's intention. **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 58: We will amend this paragraph based on the commenter's concern so that it is shorter and easier to read. We will not be taking out the lbs/hour language entirely so that there is flexibility in determining baseline credit. In instances where there is not a full year of calendar data for a facility a lbs/hour measurement is sometimes needed for the credit to be properly calculated. The following amendments will be incorporated in the proposed rule:

~~Emission offsets generally should be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rates. The director shall allow tons per year in addition to the a pounds per hour basis if necessary to determine the baseline calculations. When offsets are calculated on a tons per year basis, the~~ *The baseline emissions for existing sources providing the offsets shall be calculated using the actual emissions definition specified in rule 3745-31-01 of the Administrative Code.*

Rule 3745-31-24(C)

Comment 59: OAC rule 3745-31-24(C), as currently written, provides that "only emissions that have been set aside for new growth in the most recent [SIP] can be used by a major stationary source or major modification to offset emissions. Emissions reserved for new source growth in past Ohio [SIPs] cannot be used by a major stationary source or major modification to offset emissions." The Utilities ask Ohio EPA to identify where in the SIP it lists emissions set aside for "new source growth." The Utilities believe that this practice has not been utilized by Ohio EPA and this is not a requirement under the federal regulations. The Utilities are concerned that if Ohio EPA is not utilizing the practice of setting aside emission offsets for new growth, any new major stationary source or major modification seeking emission offsets may face legal challenges regarding these offsets because they have not been set aside for new growth. Thus, the Utilities encourage Ohio EPA to revise the regulations and remove the requirement for an old growth cushion. **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies ("the Utilities"))**

Response 59: Ohio EPA has not submitted a SIP that explicitly lists emissions set aside for new source growth. We will review any new major stationary source or major modification seeking emission offsets on a case-by-case basis. Ohio EPA maintains an Emissions Reduction Credit (ERC) Banking and Trading System that companies can utilize to "bank" ERCs for trading with any new major stationary source or major modification seeking emission offsets.

Rule 3745-31-24(F)

Comment 60: The proposed new language in paragraph (F)(1)(a) also should be revised to add “or legally and practically enforceable by the State” after “federally enforceable,” consistent with existing federally-approved definition of “potential to emit” in OAC Rule 3745-31-01(BBBBB). **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 60: Ohio EPA will revise the suggested language to be consistent with the “potential to emit” definition in OAC rule 3745-31-01(BBBBB).

Comment 61: Ohio EPA has revised OAC rule 3745-31-24(F)(1) to address when a stationary source may be credited with emissions reductions. The revised language states that the following requirements must be met:

(a) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(b) The shutdown or curtailment occurred after the last day of the base year used for the Ohio state implementation planning process. For purposes of this paragraph, the director may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the most recent attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

However, OAC rule 3745-31-24(F)(2) still includes the following language:

(2) Emission reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the major stationary source application is filed, or, if the applicant can establish that the proposed major stationary source is a replacement for the shutdown or curtailed stationary source and the cutoff date provisions of paragraph ~~(G)(1)~~ (F)(1)(b) of rule 3745-31-24 of the Administrative Code this rule are observed.

The language in OAC rule 3745-31-24(F)(2) appears to be inconsistent with 40 CFR Part 51, Appendix S and the language, as written, is problematic in instances where a new NAAQS has been proposed and the attainment demonstration has not been approved. In those instances, a major source or modification can only obtain emission credits that were shut down after the date of the permit application filing or if the source is a replacement. Ohio EPA should revise OAC rule 3475-31-24(F)(2) to be consistent with 40 CFR Part 51, Appendix S as follows:

(2) Emission reductions that do not meet the requirements of paragraph (F)(1) may be credited ~~in the absence of an approved attainment demonstration~~ only if the shutdown or curtailment occurred on or after the date the major stationary source application is filed, or, if the applicant can establish that the proposed major stationary source is a replacement for the shutdown or curtailed stationary

source and the cutoff date provisions of paragraph ~~(G)(1)~~ (F)(1)(b) of ~~rule 3745-31-24 of the Administrative Code~~ this rule are observed.

While subtle, the proposed language allows the use of prior shutdown credits that are included in an attainment demonstration even when it has yet to be approved by U.S. EPA. The problem with the current language is that it effectuates a construction ban in nonattainment areas where an attainment demonstration has not been approved and there are no shutdowns or curtailments after the date of the application or where the source or modification is not a replacement. Ohio EPA's current language is more stringent than 40 CFR Part 52, Appendix S and, therefore, should be revised. **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies ("the Utilities"))**

Response 61: The language in OAC rule 3745-31-24(F)(1) and (F)(2) is consistent with the language in 40 CFR 61.165(a)(3)(ii)(c), which sets forth the minimum requirements for an approvable pre-construction program. Ohio EPA will retain this language to stay consistent with the federal rule.

Comment 62: The commenter states that if the definition of "surplus" in draft OAC 3745-31-01(ZZZZZ) is modified as suggested above, all but the last sentence of this paragraph can be deleted. As suggested there, the agency may not deprive a source operator of an offset due to use of an emissions reduction in an attainment demonstration without notice to the owner and operator and opportunity to comment, and may do so only if use of the reduction is necessary for the demonstration. Those concepts make the first two sentences of this paragraph unnecessary. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Response 62: The language the commenter is referring to is taken from the federal regulation, 40 C.F.R 51.165 paragraph (a)(3)(ii)(C)(1)(ii). This language can also be found in paragraph IV.C. 3.i.2. of 40 C.F.R Part 51 Appendix S - Emission Offset Interpretative Ruling. Ohio EPA has relied on these two federal regulations to develop the nonattainment rules and emission offset rules in OAC Chapter 3745-31. We believe it is imperative to keep this paragraph so that it is clear how to determine if shutdown or curtailment credits under this chapter are creditable. When Ohio EPA proposes an attainment demonstration to US EPA, we put our proposed determination on our website and have a formal public review process, including a public hearing. If a source wants to argue that an emission reduction should not be included in an attainment demonstration, or was inadvertently included, they can present their argument at the public hearing or during the formal comment period.

We also have put in place a shutdown notification process in OAC rule 3745-111-03 that encouraging companies to use the ERC Banking Program when sources shut down. We believe this process will inform companies of the opportunity to submit their information to Ohio EPA so that we do not inadvertently put reductions in our attainment demonstrations if the emission reduction is not required for us to attain the applicable National Ambient Air Quality Standards (NAAQS).

Rule 3745-31-24(G)

Comment 63: The commenter states that this paragraph addresses the same subject as the definition of “surplus”, and should be deleted. **(Robert L. Brubaker and David E. Northrop on behalf of Ohio Chamber of Commerce, Ohio Chemistry Technology Council and The Ohio Manufactures Association)**

Response 63: We disagree with the commenter. The surplus definition does not address emission reductions relied on in issuing a permit under OAC Chapter 31. The surplus definition also does not address reasonable further progress. We feel it is important to be as clear as possible in our rules so that the regulated community and staff at Ohio EPA both understand what emission reductions may be claimed as credit. Again Ohio EPA has taken this language directly from federal regulation. See 40 CFR 51.165 (a)(3)(ii)(G). See Response “24” for further details on the surplus definition.

Comment 64: OAC rule 3745-31-24(G) is a new provision that states that emission reductions “can only be claimed to the extent that the director has not relied on it in issuing any permit under this chapter, or the state of Ohio has not relied on it in an attainment demonstration or for reasonable further progress.” This provision is redundant and could be confusing if misconstrued. OAC rule 3745-31-24(F)(1)(a) requires the emission reductions to be “**surplus**, permanent, quantifiable, and federally enforceable” (emphasis added). Ohio EPA defines surplus as emissions that:

(1) Are below allowable emission rates.

(2) The state of Ohio **has not relied on the emission reduction in a required attainment demonstration** of a national ambient air quality standard or a **demonstration of reasonable further progress.**

(3) The director has not relied on the emission reduction in issuing any permit under this chapter.

(4) Is not required by any applicable laws.

OAC rule 3745-31-01(BBBBBB) (emphasis added). Because emission offsets are required to be surplus, provision (G) is unnecessary and should be removed. **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies (“the Utilities”))**

Response 64: Ohio EPA agrees with the comment and will delete the redundant language in OAC rule 3745-31-24(G).

Rule 3745-31-25, “Nonattainment provisions - location of offsetting emissions”

Comment 65: The language in rule number 3745-31-25 is relevant and important to rule 3745-31 and to the OAC. **(Scott Bushbaum, Ohio Citizen Action)**

Response 65: Ohio EPA appreciates the commenter's support in our rule making changes.

Rule 3745-31-26, "Nonattainment provisions - offset ratio requirements"

Comment 66: The language in rule number 3745-31-26 is relevant and important to rule 3745-31 and to the OAC. **(Scott Bushbaum, Ohio Citizen Action)**

Response 66: Ohio EPA appreciates the commenter's support in our rule making changes.

Comment 67: OAC rule 3745-31-26 establishes offset ratios in nonattainment areas. According to the July 11, 2011 Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles (PM2.5), "any ratio involving PM2.5 precursors adopted by the state for use in the Interpollutant offset program for PM2.5 nonattainment areas must be accompanied by a technical demonstration that shows the net air quality benefits of such ratio for the PM2.5 nonattainment area in which it will be applied." Therefore, if this rule will be submitted as a revision of Ohio's SIP, it should be accompanied by such a technical demonstration. **(Genevieve Damico, Chief, Air Permits Section, U.S. EPA Region 5)**

Response 67: Ohio EPA will retain the Interpollutant offset ratios within this rule. However, we will provide a technical demonstration to support the ratios when the rule is submitted as a revision of Ohio's SIP.

Rule 3745-31-26(D)

Comment 68: Subparagraph (D)(2)(a)(i) should be reformatted to decrease the indent, and renumbered as (D)(2)(b). **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 68: Ohio EPA has reformatted the paragraph as suggested.

Rule 3745-31-27, "Nonattainment provisions - administrative procedures for emissions offsets"

Rule 3745-31-27(A)

Comment 69: The proposed change to language in rule 3745-31-27(A) where the words "and/or" are changed to "or" is irrelevant to the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 69: Ohio EPA has amended the language of the rule to more accurately reflect the Agency's intent. In instances in which more than one item is required, "and" has been utilized. For places where persons may select a single option, the term "or" will be used.

Rule 3745-31-27(A)(1)(b)

Comment 70: For clarity, subparagraph (A)(1)(b) should be reformatted to add a paragraph break and decrease indent after the first sentence (“(external emission offsets).”). Additionally, after the proposed new phrase “or federally enforceable permit condition” in subparagraph (A)(1)(b), the phrase “or requirement legally and practicably enforceable by the state” should be added, consistent with the definition of “potential to emit” in OAC rule 3745-31-01(BBBBB). **(Robert L. Brubaker and Eric B. Gallon on behalf of numerous and diverse clients of Porter Wright Morris & Arthur LLP that represent a broad cross-section of Ohio businesses)**

Response 70: Ohio EPA has reformatted the paragraph as suggested for clarity and has added the language “or requirement legally and practicably enforceable by the state” to be consistent with the definition of “potential to emit.”

Rule 3745-31-28, “Review of major stationary sources of hazardous air pollutants requiring MACT determinations”

Comment 71: The proposed changes to rule 3745-31-28(C) where punctuation is added and omitted and the word “or” is omitted clearly separates one subset from the next thereby providing a more comprehensive protection under the rule. **(Scott Bushbaum, Ohio Citizen Action)**

Response 71: Ohio EPA appreciates the commenter’s support in our rule making changes.

Rule 3745-31-29, “General Permit-to-Install and general PTIO”

Comment 72: The proposed changes to rule 3745-31-29(A)(1) where the words “the following” are added, the punctuation is added and omitted as proposed and the word “and” is omitted are important and relevant to the rule insofar as to clearly identify one subset from the next and provide better protection of this rule to the OAC. **(Scott Bushbaum, Ohio Citizen Action)**

Response 72: Ohio EPA appreciates the commenter’s support in our rule making changes.

End of Response to Comments