



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. Ohio EPA then proposed the amended, new and rescinded rules to the Joint Committee on Agency Rule Review (JCARR). Ohio EPA held a public hearing for these rules on Tuesday, February 18, 2014. Ohio EPA accepted comments on the rule proposal. 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 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 draft rules still include the PM_{2.5} Significant Impact Levels (SILs) and Significant Monitoring Concentrations (SMCs). OEPA's draft PM_{2.5} rules Response to Comments document includes a response (comment No. 49 on page 41 of 52) to Region 5's May 10, 2013 comment letter saying that OEPA is aware of the January 22, 2013 court decision which vacated and remanded the SILs and SMCs, and that OEPA will make the necessary changes to the rules before submitting the rules for SIP approval. Please keep in mind that the situation remains that it is unlikely that we would be able to approve the SILs into the SIP, and likewise, we cannot approve the SMCs into the SIP. **(Charmagne Ackerman, Environmental Engineer, EPA Region 5)**

Response 1: Ohio EPA is still awaiting further rulemaking and/or guidance from US EPA, and we still plan to make the necessary changes before submitting the rules for SIP approval.

Rule 3745-31-01, "Definitions"

Rule 3745-31-01(M), (EEE) and new paragraph (GGGGG)

Comment 2:

In October of 2012, the commenter notified the Ohio EPA that the definition of “auto body refinishing facility” in OAC rule 3745-31-01(M) could potentially prevent automotive repair businesses from claiming a PBR if the business ever conducted work on any vehicle weighing over 8,500 lbs. As currently written, this definition would prohibit any repair facility with a PBR from refinishing many popular vehicles currently on the road today, such as a Ford F-250, a Ford Expedition XL SUV, or many popular vans. The definition of “auto body refinishing facility” has caused confusion within the automotive repair industry. This has resulted in some shops improperly claiming the PBR exemption, while at the same time, other repair facilities, trying to properly comply, file the more complex and onerous PTIO.

Since sharing this concern with the Ohio EPA we have worked diligently together on a possible solution. After numerous discussions, it was determined that this problem could be resolved by simply removing the term “light duty trucks” from the definition of “auto body refinishing facility.” “Light duty truck” is defined in OAC Section 3745-21-01(D)(109) as a motor vehicle rated at eight thousand five hundred pounds gross weight or less which is designed primarily for highway use and for the transportation of property, or is a derivative of such vehicle. We were glad to see the Ohio EPA implement this change in the proposed rule. It is important to note that the proposal would not lower emission standards or reporting requirements for the PBR or PTIO. Instead, it would simply allow shops that comply with the standards established in the PBR, to work on many popular vehicles weighing over 8,500 lbs. that are on the road today. The proposed Ohio EPA rule would not define “auto body refinishing facility” as:

(M) “Auto body refinishing facility” means a facility engaged primarily in collision repair and refinishing of automobiles and ~~light-duty~~ trucks. Automobile paint-only and customizing facilities, which are engaged in repainting used motor vehicles and ~~light-duty~~ trucks, but do not perform collision repair work, are also included in this definition. Mobile auto body painting operations, which employ temporary spray booths meeting the design criteria specified by paragraph (A)(4)(g) of rule 3745-31-03 of the Administrative Code, are also included in this definition.

While we support this change, we do have a suggestion that we believe may provide additional clarity to the definition of “auto body refinishing facility.” We noticed that the term “truck” is not defined in OAC rule 3745-31-01. Nor is it defined in either OAC rule 3745-15-01 or 3745-21-01, which are both referenced in the rule. Failure to define “truck” could potentially cause additional confusion for Ohio’s automotive repair industry. We would suggest the term “truck” should be clearly defined in OAC rule 3745-31-01. We believe the current definition of “truck” used by the Ohio Department of Public Safety (ODPS) in OAC rule 4501-43-02(C) would be sufficient. ODPS defines truck as:

(C) “Truck” means every motor vehicle, except trailers and semitrailers, designed and used to carry property and having a gross vehicle weight rating of ten thousand pounds or less.

Adding this definition between 3745-31-01(FFFFFF) and (GGGGGG) of the proposed rule would allow automotive repair facilities claiming a PBR to work on vehicles weighing over 8,500 lbs., while at the same time provide a clear description of a “truck.” Those vehicles weighing over 10,000 lbs., as used in this definition, are typically not the average passenger vehicle and usually require special equipment to repair and refinish. Therefore, it is appropriate that those shops working on these larger vehicles would be required to obtain a PTIO.

Additionally, we believe the definition of “job” in paragraph (EEE) of the proposed rule needs to be updated to reflect the removal of “light duty truck” in the chapter. We would suggest the following:

(GGG)(EEE) “Job” means the total area or areas to be refinished or repainted on an automobile or ~~light-duty~~ truck by an auto body refinishing facility.

(Jamie Chilcoat, President/Chairman, Automotive Services Association of Ohio)

Response 2: Ohio EPA thanks the commenter for the suggestions and has made the suggested changes to OAC rule 3745-31-01(M) and has added a definition for “truck” to OAC rule 3745-31-01(GGGGGG).

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

Comment 3: The commenter states that while the Utilities understand that Ohio EPA is currently revising OAC rule 3745-31-03 in a separate rulemaking, the Utilities think the definition of “Emergency” should include a provision that addresses electrical blackouts or failure of a grid. As noted before, 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)(viii)(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 think 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.

The Utilities are satisfied with the revision to OAC rule 3745-31-01(NN) to include the following language: “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)(i), and 40 CFR 63.6640(f)(i) and (ii).”
(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies (“the Utilities”))

Response 3: Ohio EPA has 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 federal regulations list the following operating scenarios as acceptable for operation of an emergency engine: emergency operation, maintenance and testing, emergency demand response, and operation in non-emergency situations for 50 hours per year. 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” falls under the “emergency demand response” operating scenario, and is not written under the definition of “emergency.” Ohio EPA has, therefore, included this operating scenario in paragraph (NN) instead of paragraph (MM) (definition of “emergency.”):

“(NN) “Emergency engine” means a stationary reciprocating engine or a turbine engine which operates as an emergency or standby mechanical or electrical power source and is used only during the following:

(1) Emergencies.

(2) Any combination of the following purposes for a maximum of 100 hours per calendar year:

(a) Maintenance checks and readiness testing, provided that the tests are recommended by federal, state or local government, the manufacturer, the vendor, the regional transmission organization or equivalent balancing authority and transmission operator, or the insurance company associated with the engine.

(b) Emergency demand response for periods in which the 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.”

Comment 4: In subparagraph (MM)(2), the word “or” is missing between “local supply equipment failure” and “facility equipment failure.” **(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 4: Ohio EPA has revised the rule as suggested.

Comment 5: The first sentence in subparagraph (NN)(2)(e) is missing three words, which are italicized and bolded as follows:

“The fifty hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility **to supply power** to an electric grid or otherwise supply power as part of a financial arrangement with another entity unless the conditions in paragraph (NN)(2)(d) of this rule are met.”

(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 5: Ohio EPA has revised the rule as suggested.

Rule 3745-31-01(LLL)

Comment 6: In subparagraph (1), the proposed rule revisions accidentally include both Ohio EPA's original draft revision (in which the words "any one or a combination of the following" were added to the first, unnumbered paragraph in section (LLL)) and Ohio EPA's new proposed revision (in which the first paragraph is numbered "(1)" and the words "any one or" are not included). The first, unnumbered paragraph should be removed, as appears to have been Ohio EPA's intent. **(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 6: Ohio EPA thanks the commenter for pointing out this mistake and has revised the rule as suggested.

Rule 3745-31-01(NNN)

Comment 7: 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 7: Ohio EPA has revised the rule as suggested.

Rule 3745-31-01(SSS)

Comment 8: The commenter states that there is a hyphen missing after "(PM2.5)" in subparagraph (1)(b)(iii). **(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 has revised the rule as suggested.

Rule 3745-31-01(VVV)

Comment 9: Subsection (3)(a) of Ohio EPA's proposed rule does not match the description of that subsection in Ohio EPA's Response to Comments. The beginning of the "contemporaneous" period described in the proposed rule – "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 the particular change or project" – is the same as what Ohio EPA proposed in its draft rule revision. Ohio EPA's Response to Comments, however, states that Ohio EPA has "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.” To the extent Ohio EPA intended to revise the proposed rule to make the beginning of the contemporaneous period the date five years before the date construction is expected or schedule to commence, we would support that revision. We would oppose, however, Ohio EPA’s apparent intention to require the application to be complete in order for the submittal of the application to be used to set the beginning of the contemporaneous period. Ohio EPA states, in its Response to Comments, that it is trying to “revise the definition such that the contemporaneous start and end dates are based on static events, not variable events.” If the initial application must be determined to be complete in order to set the beginning of the contemporaneous period, then the beginning of the contemporaneous time period would change if the initial application were rejected as incomplete. This would be inconsistent with Ohio EPA’s intentions for these revisions.

In the language describing the end of the “contemporaneous” period, the second instance of the word “on” (“***and ending on the date **on** which the owner or operator has identified”) is ungrammatical and should be omitted, if Ohio EPA adopts the proposed language. We would oppose, however, the adoption of Ohio EPA’s proposed revision. Ohio EPA’s proposed end date – “the date *** which the owner or operator has identified in the initial application as the date that the new or modified emissions unit is scheduled to start operating” – would not take into account instances in which an owner or operator plans to shut down an existing emissions unit, and take credit for the decrease in emissions resulting from that shutdown, when a new emissions unit becomes operational. In such instances, as the date on which the new unit is scheduled to start operating changes over time, so too would the date on which the old emissions unit would be scheduled to shut down. Under Ohio EPA’s definition, if the new emissions unit begins operation later than expected, and the old emissions unit ultimately shuts down after the date on which the owner or operator initially believed the new unit would start operating, the decrease in emissions from the shutdown of the old unit would not be within the contemporaneous period. US EPA’s 1990 Draft NSR Workshop Manual defines the “contemporaneous” period as “when the new [or modified] emissions unit becomes operations and begins to emit a pollutant.” US EPA, New Source Review Workshop Manual, at pp. A.37 – A.38 (DRAFT Oct. 1990). Defining the end of the contemporaneous period to occur when the new or modified emissions unit becomes operational would ensure that sources could obtain credit for emissions decreases from shutting down older sources upon starting up newer sources. We would urge Ohio EPA to follow US EPA’s lead and adopt their definition of “contemporaneous.”

Accordingly, we would recommend the following language in subparagraph (3)(a):

“An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the period beginning five years prior to the date on which the owner or operator expects construction to commence on the new or modified emission unit, and ending on the date when the new or modified emissions unit becomes operational and begins to emit a pollutant.”

(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 9:

Ohio EPA agrees there is inconsistency in what was described in the Response to Comments and in the language in the proposed rule. We will revise the rule to better state our intentions, that we are basing the beginning of the contemporaneous period on the date the permittee expects to start construction. We will base this date on the best knowledge of the permittee when they first apply for a permit as identified in their initial, "preliminarily complete" application.

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. This is not the same as the technical completeness review, which involves a more in-depth review of the technical aspects of the application, and occurs after the application has been determined to be preliminarily complete. This date, therefore, will not change throughout the technical review of the application.

Ohio EPA agrees with the commenter's suggestion to define the end of the contemporaneous period to occur when the new or modified emissions unit becomes operational as suggested in US EPA's 1990 Draft NSR Workshop Manual.

Ohio EPA will revise the rule as follows:

"An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the period beginning five years prior to the date on which the owner or operator of the facility expects construction to commence, as stated in the initial complete application for an installation permit, for a new or modified emission unit for the particular change or project, and ending on the date when the new or modified emissions unit becomes operational and begins to emit a pollutant."

Comment 10:

For subparagraph (3)(e), Ohio EPA's Response to Comments states that Ohio EPA agrees the phrase "only to the extent that the following applies" is grammatically flawed, and therefore changes the phrase to "if the following applies." While this is an improvement, the phrase "The following applies" is still grammatically flawed; it should read "the following apply." Also, subparagraphs (i)-(iv) in this subsection should end in semicolons, rather than periods; subparagraph (iii) should have the word "and" added after the semicolon; and subparagraph (iv) should end with a period. Additionally, subparagraph (3)(f) should end with a 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 10:

As stated in the previous response to comments, new phrasing and punctuation was added to some of the rules 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. Subparagraphs (i) – (iv) will retain periods instead of semicolons, in order to conform to the new formatting conventions. Periods have been added to subparagraphs (iii), (iv) and (3)(f). Also, the rule has been revised to read: “(e) A decrease in actual emissions is creditable only if the following apply:”

Rule 3745-31-01(QQQQ)

Comment 11: The commenter reiterates a prior comment 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) (proposed OAC rule 3745-31-01(BBBBB) (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 11: Ohio EPA has considered the commenter’s concern and has changed the definition as follows:

“‘Permanent’ means that emission reductions used to offset emission increases are assured for the life of the corresponding increase through a federally enforceable mechanism, through restrictions that are legally and practicably enforceable by the state, or because higher emissions are no longer physically or operationally possible, whether the corresponding increase is limited or unlimited in duration.”

Rule 3745-31-01(UUUU)

Comment 12: In the definition of “PM2.5 direct emissions,” there is a missing “).”

Response 12: Ohio EPA has revised the rule as suggested.

Rule 3745-31-01(WWWW)

Comment 13: The commenter reiterates a prior comment that 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 (NNNN)(1)(c) and (2)(a) and (VVVV)(). If Ohio EPA ultimately decides to retain the proposed new language, however, we recommend that the definition be revised to add the following italicized and bolded language, in order to ensure that the definition reflects OHI EPA’s intentions as explained in its Response to Comments:

“PM2.5 precursor’ means those air pollutants other than PM2.5 direct emissions that Ohio EPA has demonstrated, with US EPA approval, significantly contribute to the formation of PM2.5 in a specific area. PM2.5 precursors include sulfur dioxide and 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 13: Ohio EPA has considered the comments and has revised the paragraph as suggested.

Rule 3745-31-01(YYYY)

Comment 14: The commenter states that Ohio EPA has proposed to add the words “or gaseous emissions that condense to form particulate matter at ambient temperatures” to the definition of “PM10 emissions,” in an apparent effort to bring that definition in line with the definition in Paragraph (UUUU), per the recommendation of Wei-an Chang, an Environmental Engineer in EPA Region 5. Mr. Chang and Ohio EPA appear to have misread Paragraph (UUUU) as providing the definition of “PM2.5 emissions.” It does not. Instead, it provides the definition of “PM2.5 direct emissions.” As a result of this mistake, the definition of “PM1.5 emissions” in proposed Paragraph (VVVV) does not include condensibles, but the definition of “PM10 emissions” in Paragraph (YYYY) does. We would recommend that the proposed revision to Paragraph (YYYY) be omitted and the language in that definition kept as it was. **(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 14: Ohio EPA thanks the commenter for recognizing this discrepancy and we have revised the rule to go back to the original language.

Rule 3745-31-01(JJJJ)

Comment 15: The commenter reiterates a prior comment that the phrase at the end of the definition of “quantifiable” – “established by applicable law or approved by the director” – is unnecessary and 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 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 agrees that “reliable and replicable method” is sufficient to assure that the emissions will be accurately quantified. We have deleted the phrase “established by applicable law or approved by the director” at the end of the definition as suggested.

Rule 3745-31-01(NNNNN)

Comment 16: The definition of “regulated NSR pollutant,” 3745-31-01(NNNNN), should include volatile organic compounds and ammonia as PM2.5 precursors in nonattainment areas. EPA proposed rules on November 15, 2013, clarifying PM2.5 implementation requirements for the states. EPA issued the rule in response to a recent decision of the D.C. Circuit Court addressing the role subpart 4 of Part D, title 1 of the Clean Air Act in implementing PM2.5 air quality standards. Since the rule has not yet been finalized and a SIP package has not been submitted, it should be considered when preparing the SIP package. **(Charmagne Ackerman, Environmental Engineer, EPA Region 5)**

Response 16: Ohio EPA will retain the current language in the definition for “regulated NSR pollutant.” Ohio EPA will provide a technical demonstration to show that volatile organic compounds and ammonia do not need to be listed as PM2.5 precursors in nonattainment areas within our rule. This technical demonstration will accompany the rule when it is submitted as a revision of Ohio’s SIP.

Rule 3745-31-01(DDDDDD)

Comment 17: The commenter suggests Ohio EPA change the final words in this section, “within two years of the beginning operation of the new source or modification of the existing source” to “within two years of beginning operation.” This change will eliminate the awkward phrase “the beginning operation” and also eliminate unnecessary language, as it is clear that “beginning operation” refers to the new source or modification discussed in the remainder of the definition. **(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: Ohio EPA appreciates the suggested clarification for the definition and has revised the language as suggested.

Rule 3745-31-01(HHHHHH)

Comment 18: The commenter points out that it is no longer necessary to include “or ‘µg/cm” in this definition, because the proposed revisions to OAC Chapter 3745-31 have changed all instances of “µg/cm” in that Chapter to “µg/m³.” **(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 18: Ohio EPA has revised the rule as suggested.

Rule 3745-31-01(LLLLLL)

Comment 19: The commenter states that there is an extra comma, which should be omitted, after the first instance of the words “date of” in the first paragraph of this section. Additionally, three of the website URLs listed in subparagraph (1) need to be updated. In subparagraph (1)(e), the text of the CAA has been moved to <http://www.epa.gov/oar/caa/text.html>. In subparagraph (1)(h), the text of CERCLA has been moved to <http://www2.epa.gov/laws-regulations/summary-comprehensive-environmental-response-compensation-and-liability-act>. And, in subparagraph (1)(n), the NAICS codes have been moved to <http://www.census.gov/eos/www/naics>. **(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 thanks the commenter for informing us of the updated website links and has revised the paragraph as suggested.

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

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

Comment 20: In Paragraph (E), subparagraphs (2)(a) and (3)(a) should be renumbered as (E)(2) and (E)(3), to be consistent with Ohio EPA’s reformatting of subparagraph (E)(5). **(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 has made the suggested changes for reformatting subparagraphs (2)(a) and (3)(a) to (E)(2) and (E)(3) as suggested.

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

Comment 21: Ohio EPA’s proposed language for the definition of “reasonable possibility” is acceptable as the proposed revisions make it consistent with federal regulations under 40 CFR 51.165(a)(6)(vi). **(Cheri A. Budzynski on behalf of the Ohio Utility Group and its member companies (“the Utilities”))**

Response 21: Ohio EPA appreciates the commenter’s support in our rulemaking changes.

Rule 3745-31-11, “Attainment provisions – ambient air increments, ceilings and classifications”

Rule 3745-31-11(B)

Comment 22: In the table in paragraph (B), “PM10” is repeated twice. The second instance of “PM10” should 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 22: Ohio EPA has revised the rule as the commenter suggested.

Rule 3745-31-23, "Nonattainment provisions - stationary sources locating in designated clean or unclassifiable areas which would cause or contribute to a violation of a national ambient air quality standard"

Comment 23: Section (A) includes a table that lists "significance levels" for emissions from a proposed major stationary source or major modification that will be located in an attainment or unclassifiable area. The table in Section (A) of the rule is missing the 10.0 µg/m³ SIL for NO₂ (1-hr. ave.), which Ohio EPA adopted as an interim standard in March 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 23: Ohio EPA has revised the rule as the commenter suggested.

Rule 3745-31-24, "Nonattainment provisions - baseline for determining credit for emission and air quality offsets"

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

Comment 24: We reiterate our prior comment that Paragraph (B)(1)(a) appears to require 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. In particular, the first sentence should be revised to make clear to what words the phrase "if necessary" applies. The words "determine the baseline calculations" should also be clarified, as it is unclear what it means to "determine" a "calculation." Additionally, Ohio EPA should clarify the extent to which a lbs/hour measurement would or could be used to determine baseline credit. The proposed subparagraph states that baseline emissions for existing sources "shall be calculated using the actual emissions definition specified in rule 3745-31-01 of the Administrative Code." The definition of "actual emissions" in OAC 3745-31-01, however, generally requires the use of the actual emissions during the twenty-four month baseline period, the calculation of which should not require the use of a lbs/hour measurement. **(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 24: Ohio EPA will revise this paragraph to clarify certain aspects of the rule language. The pounds per hour basis is recommended by US EPA in 40 CFR Part 51, Appendix S – Emission Offset Interpretive Ruling (see bold language):

"C. Baseline for determining credit for emission and air quality offsets. The baseline for determining credit for emission and air quality offsets will be the SIP emission limitations in effect at the time the application to construct or modify a source is filed. Thus, credit for emission offset purposes may be allowable for

existing control that goes beyond that required by the SIP. **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 rate. The reviewing agency should specify other averaging periods (e.g., tons per year) in addition to the pounds per hour basis if necessary to carry out the intent of this Ruling.** When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets should be calculated using the actual annual operating hours for the previous one or two year period (or other appropriate period if warranted by cyclical business conditions). Where the SIP requires certain hardware controls in lieu of an emission limitation (e.g., floating roof tanks for petroleum storage), baseline allowable emissions should be based on actual operating conditions for the previous one or two year period (*i.e.*, actual throughput and vapor pressures) in conjunction with the required hardware controls.”

US EPA’s intent for using a pounds per hour basis is “to help negate false emission offset credits that would result from the use of annual emissions and low annual capacity factors.” (http://www.epa.gov/nsr/ttnnsr01/naas1/sun25_3.html). Ohio EPA’s original intent was to specify all possible averaging periods in addition to the recommended pounds per hour averaging period for determining emission offsets, to satisfy the second sentence in bold, above. However, to keep the language in the rule as clear and general as possible, Ohio EPA will revise the rule to state:

~~*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. 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. The director shall allow a pounds per hour averaging period for determining emission offsets when a tons per year averaging period results in a significant over- or underestimation of emission offset credits.*

Rule 3745-31-24(C)

Comment 25:

Old growth cushion. 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.” As Ohio EPA has noted in its response to comments, Ohio EPA does not follow this practice. Because Ohio EPA does not follow this practice but still has regulation with the quoted provision, major sources could be susceptible to legal challenges because the offsets have not been set aside for new growth. In fact, the Utilities are aware of an appeal to the Environmental Review Appeals Commission of a permit-to-install that was challenged because the offsets were not “set aside for new growth.” Thus, the Utilities still encourage Ohio EPA to revise the regulations and remove the requirement for an old growth cushion.

Operating hours and stationary source shutdown. Ohio EPA has revised OAC 3745-31-24(F) to address when a stationary source may be credited with emissions reductions. Provision (F)(a) has been revised to be consistent with the federal rules. 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.

In the response to comments, Ohio EPA stated that this provision was consistent with 40 CFR 61.165(a)(3)(ii)(c) (*sic*) (this should be 40 CFR 51.165(a)(3)(ii)(c)). This statement is incorrect. 40 CFR 51.165(a)(3)(ii)(c) states:

(2) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in paragraph (a)(3)(ii)(C)(1)(i) of this section may be generally credited only if:

- (i) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or
- (ii) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraph (a)(3)(ii)(C)(1)(i) of this section.

Ohio EPA's rule still contains language requiring an approved attainment demonstration while the federal language has removed this requirement. The language in OAC rule 3745-31-24(F)(2) 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 3745-31-24(F)(2) to be consistent with 40 CFR Part 51, Appendix S and 40 CFR 51.165(a)(3)(ii)(c) 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 25: 3745-31-24(C) provides a mechanism for Ohio EPA to "set aside" emissions for new source growth that may be used to offset emissions. Consistent with U.S. EPA requirements, this set aside must be a part of the most recent Ohio state implementation plan (40 CFR 51.165(a)(3)(C)(1)(ii)). The commenter stated that Ohio EPA acknowledges in our response to comments on the interested party draft rule that Ohio "does not follow this practice." We disagree. We stated that Ohio has not submitted a SIP that explicitly lists emissions set aside for new source growth but rather we review these requests on a case-by-case basis. It is during that review that we determine if we need to request U.S. EPA provide for available offsets established prior to most recent inventory to be set aside as part of our SIP for a particular project. Ohio EPA believes paragraph (C) provides for this continued practice.

Thank you for pointing out or inconsistency with the current federal rule language in our paragraph (F)(2). Ohio EPA will be making your suggested change to be consistent with the federal rule.

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

Comment 26: The draft rules still include the PM2.5 nonattainment interpollutant offset ratios. OEPA's draft PM2.5 rules Response to Comments document includes a response (comment No. 67 on page 51 of 52) to Region 5's May 10, 2013 comment letter saying that OEPA is retaining the interpollutant offset ratios within the rule, however will provide a technical demonstration to support the ratios when the rule is submitted as a revision of Ohio's SIP. Please keep in mind that a technical demonstration will still be needed to support the ratios before they can be approved into the SIP. **(Charmagne Ackerman, Environmental Engineer, EPA Region 5)**

Response 26: 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.

End of Response to Comments