

**Permitting Issues (discussed at the quarterly
Ohio Environmental Service Industries (OESI) meeting)**

**Prepared by Ohio EPA DHWM
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OESI members asked: “What constitutes a modification (equipment replacement or upgrading with functionally equivalent component) vs. maintenance required by the permit?” (OAC rule 3745-50-51 Appendix Provision and Permit Condition is at issue):

DHWM response: Item B(3) of the Appendix to OAC rule 3745-50-51 classifies as a Class 1 modification “equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)”.

Under 40 CFR 270.2 “Functionally equivalent component” means “a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component”. And the term “component” is defined as “any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).”

Items in B(3) of the Appendix of the Ohio rule were adopted from and are equivalent to US EPA’s appendix A(3) found in 40 CFR 270.42. The federal regulation was adopted in 1988 (see 53 FR 37012 September 28, 1988) to provide owners and operators more flexibility to change specified permit conditions and enhance public participation.

On the specificity of the Appendix and the role routine maintenance has in the Class modification process US EPA clarified that :

“permit modifications are applicable only when changes made to a facility affect a condition specified in the permit. Thus, for example, if a particular item of equipment, including the manufacturer's name and the model number, is specified in a permit, replacing that item with an identical item (same manufacturer and model number) would not affect that permit condition and would not require a modification. Similarly, if the equipment is described generally, then changing that equipment also would not require a permit modification as long as the new equipment met the same definition and specifications. Normal routine maintenance would not usually require a permit modification unless the activity directly affects a condition specified in the permit.”

The EPA went on to discuss Item A(3) (the equivalent to Ohio’s B(3)) and said:

“Under Item A(3), permittees are able to make routine equipment replacements that are necessary for the continued operation of the facility. Equipment that frequently needs replacement includes pumps, pipes, valves, incinerator fire-

brick and instrument readout devices. In most cases, such replacements would not require a permit modification **since the permit would acknowledge them as ongoing maintenance activities** (emphasis added). However, some permit conditions may inadvertently create restrictions by incorporating portions of the Part B permit application by reference. For example, if a permit incorporates a design drawing by reference which specifies a particular piece of equipment-including the manufacturer's name and model number of the item-the to replace the item with anything other than the original model might require a permit modification. Such an item may not be available at a later date when it needs replacement, or the permittee may prefer to replace it with an improved version.

EPA does not believe that anyone (the permittee, the public, or the government) benefits from subjecting such routine maintenance functions to the permit modification process. It is preferable that permits contain sufficient flexibility to allow these kind of equipment replacements outside the permit modification process. Therefore, if it is necessary to include design drawings in permits, the permit condition should also allow minor deviations from the design without a permit modification (although the Director may want to have the permittee send the revised design to the Agency to maintain a current file on the facility).

In spite of the preferred method of drafting permit conditions, there are many existing RCRA permits that contain very detailed information regarding facility equipment and provide little or no leeway for deviation. Therefore, Item A(3) in the Appendix provides that equipment replacement or upgrading with functionally equivalent components is a Class 1 change. This will allow the facility to change ancillary equipment without prior approval if the original equipment is no longer made or to take advantage of better designed products, so long as the new equipment is functionally equivalent to the equipment it replaces.

EPA, in spite of the preferred method of drafting permit conditions, recognizes that there are many existing RCRA permits that contain very detailed information regarding facility equipment and provide little or no leeway for deviation. Therefore, Item A(3) in the Appendix provides that equipment replacement or upgrading with functionally equivalent components is a Class 1 change. This will allow the facility to change ancillary equipment without prior approval if the original equipment is no longer made or to take advantage of better designed products, so long as the new equipment is functionally equivalent to the equipment it replaces."

Ohio EPA Application of this provision of the Appendix

Ohio EPA adheres to US EPA's interpretation of the rule and accordingly, the language in the Part B portion of the application is controlling. If a specific element of routine maintenance clearly appears in the Part B, conducting that activity will not result in a C1 modification. In each instance the specific language in the Part B application

concerning the unit at issue would have to be examined to determine whether a permit modification is required.

OESI members also asked: “Do the general terms of the permit condition A.(9), and contained in each permit, requiring proper maintenance authorize the facility owner or operator to replace existing equipment with functionally equivalent equipment without modifying the permit?”

A.9. Proper Operation and Maintenance
OAC Rule 3745-50-58(E)

*The Permittee shall at all times properly operate and **maintain the facility (and related appurtenances) to achieve compliance with the terms and conditions of this permit.** Proper operation and maintenance includes, but is not limited to, effective management practices, adequate funding, adequate operator staffing and training, and where appropriate, adequate laboratory and process controls, including appropriate quality assurance/quality control procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the terms and conditions of this permit*

Condition A.9 requires the owner operator to maintain the facility to be compliant with what is described in the “terms and conditions of the permit.” It does not address the issue of replacement of existing equipment with equipment not otherwise identified or described in the permit or permit application; this instance is addressed as a Class 1 mod so long as the replacement equipment is functionally equivalent to the original.