

**OHIO ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL**

Ohio Administrative Code Rules 3745-14-11,
3745-15-01, 3745-15-06, and 3745-17-07 -
Startup, Shutdown or Malfunction and
Scheduled Maintenance Rules

Interested Party Review
October 4, 2017

**Comments of the Ohio Chemistry Technology Council,
the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association
on Ohio EPA's Revised Draft Rule Language for
the Startup, Shutdown or Malfunction and Scheduled Maintenance Rules**

I. Introduction

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association (the "Commenters") respectfully submit the following comments in response to Ohio EPA's revised Interested Party Review draft amendments to Ohio's startup, shutdown, and malfunction (SSM) rules in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods.

The Ohio Chemistry Technology Council represents the interests of over 80 chemistry industry-related companies doing business in Ohio. The Ohio Chamber of Commerce represents the interests of over 8,000 member companies, including manufacturers, utilities, and small businesses, in addition to hosting the Ohio Small Business Council. And the Ohio Manufacturers' Association represents the interests of over 1,400 member companies to protect and grow Ohio manufacturing. The Commenters' members are regulated by Ohio's Clean Air Act State Implementation Plan (SIP) and have a direct and substantial interest in the Ohio SIP's SSM provisions.

II. Comments on Revised Draft Rule Language

A. There should be no "incorporation by reference" of federal law in OAC 3745-15-01.

As currently written, Ohio Admin. Code 3745-15-01(AA) appears to serve two purposes. First, in subparagraph (1), it provides "[i]nformation on the availability of" certain materials referenced in Ohio Admin. Code Chapter 3745-15, including the Code of Federal Regulations and the United States Code. Second, it appears to "incorporate" specific "materials subject to change," such as the federal Clean Air Act (2004 edition) (and, redundantly, the 2014 edition of Section 112(b) of the Clean Air Act although Congress has not amended that statute since 1999).

There is no longer any real reason to "reference" a federal statute or volume of regulations into Ohio EPA rules. There is such easy electronic access to the Clean Air Act and its implementing regulations that it is unnecessary to clutter up Ohio EPA rules with instructions on

where to find them. Moreover, state law does not require the inclusion of such instructions unless Ohio EPA intends to actually incorporate those federal laws into state law. See R.C. 121.72.

To that point, Ohio EPA's most recent amendments to Ohio Admin. Code 3745-15-01 indicate that Ohio EPA does not intend to actually incorporate those federal laws into state law. Prior to the most recent amendments to Ohio Admin. Code 3745-15-01, paragraph (AA) (previously numbered as paragraph (BB)) was titled "Incorporation by reference" and explicitly stated that the referenced materials "are hereby made a part of the regulations in this chapter." Ohio EPA modified the title to "Referenced materials" and removed the incorporation language from the paragraph. Moreover, Ohio EPA modified the sentence "Material is *incorporated* as it exists on the effective date of this rule" to instead say "Material is *referenced* as it exists on the effective date of this rule." (Emphasis added.) This suggests the paragraph's references to "incorporated" materials in paragraph (AA) and subparagraph (AA)(2) are errors. If that is the case, Ohio EPA should edit Ohio Admin. Code 3745-15-01, existing paragraph (AA) (draft paragraph (BB)), as follows:

(BB) Referenced materials. This chapter includes references to certain subject matter or materials. The text of the referenced materials is not to be treated as if it were included in the rules contained in this chapter. Information on the availability of the referenced materials, as well as the date of and/or the particular edition or version of the material is included in this rule. For materials subject to change, only the specific version specified in this rule are incorporated/referenced. Material is referenced as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not included unless and until this rule as been amended to specify the new dates. ***

(2) Incorporated List of referenced materials. ***

Leaving Ohio Admin. Code 3745-15-01(AA) uncorrected, and revising it in the manner Ohio EPA has suggested, could effectively incorporate vast new swathes of federal law into Ohio law, without explanation or discussion, through the regulatory equivalent of a footnote. As Ohio EPA knows, under Ohio law, an "incorporation by reference" that meets the requirements of R.C. 121.72 is not simply a reference; it is an adoption of the full text of the referenced material as if it were printed in the Ohio Administrative Code. And the latest draft revisions to Ohio Admin. Code 3745-15-01(AA) (renumbered in the revised draft amendments as subparagraph (BB)) could be interpreted to expand the incorporation of federal law to include the entirety of 40 C.F.R. Part 60 (the federal New Source Performance Standards) and 40 C.F.R. Part 63 (the federal National Emissions Standards for Hazardous Air Pollutants) – over 1500 pages of federal regulations.

There is no reason or authority for incorporating the entire NSPS and MACT program rules into Ohio law. The fact that Ohio EPA's draft revisions to Ohio Admin. Code 3745-15-06(E) cite to 40 CFR Parts 60 and 63 would not justify or necessitate incorporating those entire multi-volume CFR parts. Ohio EPA's proposed revisions to Ohio Admin. Code Chapter 3745-15-06 would not truly make the federal NSPS and MACT rules part of Ohio law; rather, they would identify a certain set of SSM plans developed pursuant to and compliant with 40 C.F.R. 63.6(e)(3) (for MACT standards), and emission limits and work practice standards adopted as New Source

Performance Standards, as acceptable for Ohio SIP purposes. For the reasons provided above, Ohio EPA should delete Ohio Admin. Code 3745-15-01(AA) (draft paragraph (BB)) in its entirety, or at the very least strike or revise subparagraph (2) ("Incorporated materials") so that all the materials described are listed as "referenced" materials, and none as "incorporated materials."

B. OAC 3745-15-06(A)(6) should not redefine a reportable "deviation"

In Ohio Admin. Code 3745-15-06, Ohio EPA has commendably, and appropriately, proposed to specify work practice standards applicable during scheduled maintenance of air pollution control equipment. Such work practice standards are within the definition of "emission limitation" in 302(k) of the Clean Air Act, and well within the ambit of "other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements" for state implementation plans in Clean Air Act § 110(a)(2)(A). For scheduled maintenance of air pollution control equipment, the work practice standards in Ohio Admin. Code 3745-15-06(A) *will be* the SIP "emission limitations" or "other measures, means, or techniques" that apply under those operating conditions, unless the director approves a site-specific alternative emission limit under Ohio Admin. Code 3745-15-06(E).

The draft language for deviation reporting in Ohio Admin. Code 3745-15-06(A)(6), however, is too narrow to correspond with the work practice standards Ohio EPA is establishing (and the alternative emission limits Ohio EPA may establish) for scheduled maintenance. The wording "*exceedance of any emission limit*" implies a *numerical* mass emission limitation, to the exclusion of work practice standards (and also other forms of emission limitations, such as percent reduction or restrictions on the type of fuel or raw material used) for purposes of deviation reporting. An operator that complies with the work practice and notification requirements of Ohio Admin. Code 3745-15-06(A) or site-specific alternative emission limits established under Ohio Admin. Code 3745-15-06(E) complies with the SIP. It does not "exceed" or deviate from any emission limitation that applies during operating conditions *other* than scheduled maintenance of air pollution control equipment, because the new work practice standards or alternative emission limits will apply to operating conditions under which those other emission limitations do not apply. In short, compliance with the SIP is not a *deviation* reportable for Title or PTIO purposes. Accordingly, Ohio EPA should revise Ohio Admin. Code 3745-15-06(A)(6) as follows:

The ~~exceedance of any emission limit or~~ deviation ~~effrom~~ any applicable emission limitation or relevant term or condition of a permit shall be reported in accordance with Chapter 3745-77 of the Administrative Code or paragraph (D) of rule 3745-15-03 of the Administrative Code.

C. OAC 3745-15-06(E) should be revised for clarity and to avoid imposing undue and irrelevant application requirements

Commenters recommend that, for purposes of clarity and consistency, the term "emission limitation" rather than the term "emission limit" be used in every instance in Ohio Admin. Code 3745-15-06(E), in alignment with the term "emission limitation" in sections 110 and 302 of the Clean Air Act. It may appear that the term "emission limit" is meant to refer to a mass emission limit (such as pounds per unit of another parameter), rather than to the full spectrum of "emission limitations" as defined in section 302(k) of the Clean Air Act and draft subparagraph

(E)(2) of Ohio Admin. Code 3745-15-06. Because the term “emission limit” invites confusion in addition to being unduly narrow, Ohio EPA should replace it with “emission limitation.”

We also recommend that Ohio EPA rethink the requirements for alternative emission limitation applications in Ohio Admin. Code 3745-15-06(E)(3). The draft section is captioned “Alternative emission limit applications” and lists eight items that “*each application shall* include.” However, the eight items are not appropriate for all scenarios for which alternative emission limitations may be sought. Some of these items are more in the nature of criteria for acting upon the application, and some apply to certain kinds of alternative emission limitations but not to others. For example, an owner/operator might request alternative emission limitations only for malfunction periods. But draft Ohio Admin. Code 3745-15-06(E)(3), as currently written, would require that owner/operator to take steps to minimize the frequency and duration of start-ups and shutdowns and the impact of emissions on ambient air quality during start-ups and shutdowns; to analyze the potential worst-case emissions that could occur during start-ups and shutdowns; and to document the owner/operator’s actions during start-ups and shutdowns. The whole point of alternative, source-specific emission limitations uniquely applicable only during startup, shutdown, and/or malfunction modes of operation, reviewed and approved by Ohio EPA on a case-by-case basis, is to pragmatically and flexibly address the diversity of equipment, processes, and controls that exist at regulated emission units. A “one size fits all” set of application mandates just doesn’t fit these circumstances.

We respectfully suggest the following revisions to the draft text in 15-06(E):

(E) Alternative emission limitations applicable to operations during periods of start-up, shutdown, malfunction, and scheduled maintenance.

(1) Applicability.

(a) Paragraph (E) of this rule shall apply to any new or existing source that has a permit issued by the director containing emission limitations.

(b) An owner or operator of a source may request that the director establish by permit one or more sitesource-specific alternative emission limits to apply during the periods of start-up, shutdown, ~~or~~ malfunction, or ~~other~~ operating periods during scheduled maintenance.

(2) Form of alternative emissions limitations.

Alternative emission limitations may be in a different form than the emission limitation applicable to any source during other modes of operation, provided that the alternative emission limitation is in one of the following forms, and results in a system of continuous emission limitation ~~that is applicable at all times~~:

- (a) A numerical emission limitation reflecting best engineering practices for the source.
 - (b) A numerical alternative emission limitation or work practice standard established under a federal new source performance standard under 40 CFR Part 60 or national emission standard for hazardous air pollutant under 40 CFR Part 63 that is applicable to a source during one or more of the modes of operation outlined in paragraph (E)(1)(b) of this rule.
 - (c) A work practice standard representative of best engineering practices for the source.
- (3) Alternative emission limitation applications.
- Requests shall be made through, and compliant with, the permit application, permit modification, or permit renewal requirements in Chapter 3745-77 of the Administrative Code ~~and/or~~ Chapter 3745-31 of the Administrative Code, as applicable. In addition, each application shall include the following demonstrations, as applicable:
- (a) ~~Each That the~~ alternative emission limit ~~shall will~~ meet all ~~permitting requirements~~ applicable ~~levels of stringency for the type of emission limit, for example, the limit meets best available control technology for the purposes of the prevention of significant deterioration permitting program~~ ~~to the emission unit and pollutant combination in question, such as best available technology, best available control technology, and lowest achievable emission rate.~~
 - (b) ~~All That the~~ requested alternative emission limitations ~~must will~~ be legally and practically enforceable.
 - (c) ~~That the a~~lternative emission limitation ~~or work~~ practices shall be limited to specific, narrowly defined source categories (or to a single source or related group of sources) using specific control strategies. For example, cogeneration facilities burning natural gas and using selective catalytic reduction are appropriately tailored to the emission unit(s), pollutant(s), and emission control(s) in question.
 - (d) The measures the source ~~shall will~~ take steps to minimize, to the extent practicable, the frequency and duration of operation in start-up or shutdown mode.

- (e) The measures the source ~~shall will~~ take ~~steps~~ to minimize the impact of emissions on ambient air quality during start-up and shutdown mode.
- (f) ~~The source shall analyze the potential worst-case emissions that could occur during start-up and shutdown mode based on the applicable alternative emission limit, and include the results of that analysis in the alternative emission limitation plan.~~
- (g) ~~At all times, the source shall be operated in a manner consistent with good engineering practice for minimizing emissions, including efforts regarding planning, design, and operating procedures.~~
- (h) ~~The owner or operator's actions during start-up and shutdown mode shall be documented by contemporaneous operating logs or other relevant evidence.~~

D. Ohio EPA should omit the changes in OAC 3745-15-06 and retain the changes in OAC 3745-15-10

Finally, Ohio EPA should return Ohio Admin. Code 3745-15-06 to its original form and retain the draft revisions in that rule only in the new draft Ohio Admin. Code 3745-15-10. In its Response to Comments, Ohio EPA indicated that it intended to address concerns “regarding having two sets of requirements being applicable while awaiting SIP revision by creating a new OAC rule 3745-15-10 which will replace OAC rule 3745-15-06 in its entirety, only when approved by U.S. EPA into Ohio’s SIP.” However, Ohio EPA’s draft revisions to Ohio Admin. Code 3745-15-06 mirror the language in draft Ohio Admin. Code 3745-15-10. If Ohio EPA wants the existing SIP requirements in Ohio Admin. Code 3745-15-06 to remain in effect unless and until (1) the SSM SIP Call is affirmed and (2) EPA approves Ohio Admin. Code 3745-15-10 as part of Ohio’s SIP, then Ohio EPA should remove the draft revisions from Ohio Admin. Code 3745-15-06 and maintain only the comment at the top regarding the rule’s termination date. A simpler alternative would be to make the effective date of the amendments to Ohio Admin. Code 3745-15-06 the date of SIP approval by EPA. That would make Ohio Admin. Code 3745-15-10 unnecessary.

III. Conclusion

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association again appreciate the opportunity to comment on Ohio EPA's revised Interested Party Review draft rulemaking in response to U.S. EPA's finding of “substantial inadequacy” and SIP Call to amend provisions applying to excess emissions during SSM periods. As stated in our prior comments, Ohio EPA's proposed amendments to Ohio Adm. Code 3745-15-01, 3745-15-06, and 3745-17-07 offer several improvements over existing law. The revised drafts of those rules continue to build on the improvements introduced in the prior draft.

For the reasons provided above, we continue to support Ohio EPA's proposed response to EPA's SSM SIP Call, with the exceptions noted in these and our prior comments.

Very truly yours,

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