

Interested Party Comment Docket

for

Proposed Amendments to OAC 3745-31-03 to include an emissions threshold exemption and six additional permit-by-rule provisions.

Comment period: August 13, 2004 through October 13, 2004

Ohio Environmental Protection Agency
Division of Air Pollution Control

Interested Parties (IP) which have submitted comments to the Ohio EPA's proposal to amend OAC 3745-31-03 to include the emissions threshold exemption and additional permit-by-rule provisions:

Government/Regulatory Agencies

U. S. EPA, Region 5

RAPCA

HAMCO DES

Bill Juris, DAPC

NE Ohio Regional Sewer District

Franklin Co. Bd of Health

Cincinnati City Council

Environmental Orgs.

Ohio Environmental Council

D. David Altman Co.

Maumee Bay Association

ECO/Sierra Club/Rivers Unlimited

Bruce Buckheit, former Director, USEPA Air Enforcement, on behalf of ECO and Environmental Integrity Project

Western Lake Erie Sierra Club (Tony Szilagye)

Buckeye Environ. Network OCA/ECO/Allen County CE/OPIRG/Maumee Bay Assoc/NWF-GLNRC

League of Women Voters of Ohio

Communities United for Action

Industry/Trade Groups

Ohio Chamber of Commerce

Honda of America

Ohio Steel Group

Ohio Chemistry Technology Council

OPMCA/OPC c/o Jim Rocco (Sage Risk Solutions LLC)

Automotive Service Association of Ohio

Printing Industries Assoc. serving N. Kentucky and Ohio

David Newsad, RMT, Inc.

Citizens

Marie Kocoshis, Cincinnati (included with ECO/Sierra Club/Rivers Unlimited)

Linda McMahan, Cincinnati

Ned Ford, Cincinnati

Linda Perrone, Cincinnati

Nichole Hoch, Columbus

Clyde and Rita Miller, Columbus

M. Aurelie Petrarca, Columbus

Peter J. Myer, Thornville

Caroline Beidler, Marietta

Edward L. Hughes, Chesire

James R. Rife, Chesire

June D'Anieri

D. K. Burns

From: <Gupta.Kaushal@epamail.epa.gov>
To: <mike.hopkins@epa.state.oh.us>, <jennifer.nichols@epa.state.oh.us>
Date: 10/13/04 5:02PM
Subject: Comments on 31-03, general and PBR provisions (re-send)

(Re-sending this to correct the numbering of my comments.)

General provisions:

1. Is there language in 31-03 that clarifies that the exemptions apply only to the pollutants specified (e.g. a source that falls under a certain permit-by-rule due to low PM emissions will still need to apply for a PTI if its NOx emissions exceed the major source threshold)?
2. Is there a provision stating that individual sources that are adjacent and under common ownership or control must be grouped together for purposes of applicability?
3. Is there a provision clarifying that the emission thresholds that sources must meet in order to qualify refer to potential emissions rather than actual emissions?

Permit-by-rule:

4. Crushing and screening plants
(d)(iv)(b) There should be a frequency for pressure drop readings (e.g. hourly).
5. Soil-vapor and soil-liquid extraction remediation activities
(e), (f) Should there be some monitoring/recordkeeping to ensure that the source meets the <15 ppd VOC requirement during the first 18 months of operation?
6. Auto body refinishing facility
(g)(i)(b) How is "job" defined?

(g)(ii) Should there be emission limitations for particulate matter?

(g)(ii)(a) In the second row of the table, the (U)(2)(e) exemption is cited, but this exemption is specific to county and gallons-per-day usage. There is no gallons-per-day limitation in this rule. (Or are you saying that the source must qualify for the (U)(2)(e) exemption in order to qualify for the PBR?)
7. Gasoline dispensation facility with Stage I controls/Stage I and II controls
(h)(vi)(a), (i)(vi)(c) Is it necessary to have the statement, "The OC emissions from all diesel, kerosene, and used oil tank filling, and dispensing operations, if present at the facility, are assumed to be negligible?" Is it your intent to state that there is no testing requirement for those particular activities?
8. Boiler and process heater

(i)(d) Should there be a clarification that, "other combustion control techniques designed to meet an emission limitation..." cannot include things like "good engineering practices" or "clean fuel usage?" (i.e. it has to be an add-on control)

CC: <Damico.Genevieve@epamail.epa.gov>, <Angelbeck.Richard@epamail.epa.gov>, <Blathras.Constantine@epamail.epa.gov>

From: <Gupta.Kaushal@epamail.epa.gov>
To: <mike.hopkins@epa.state.oh.us>, <jennifer.nichols@epa.state.oh.us>
Date: 10/13/04 5:26PM
Subject: Additional comment on 31-03, emission threshold exemption

I apologize for the multiple mailings, but I would like to submit one additional comment:

9. Under 31-03(A)(1)(qq)(iiii)(c), the table has 260 lb/year for mercury, which seems high. Could you explain how this number was decided upon, or provide the Great Lakes Binational Toxics Strategy document that it came from? Is it possible that it should be 260 ppm (the cut-off point for high-concentration mercury) instead of lb/year?

Thank you.

CC: <Damico.Genevieve@epamail.epa.gov>, <Angelbeck.Richard@epamail.epa.gov>, <Blathras.Constantine@epamail.epa.gov>

From: "Joy Taylor-Morgan" <taylorj1@michigan.gov>
To: <rick.carleski@epa.state.oh.us>
Date: 10/12/04 2:11PM
Subject: Proposed Regs

Hi Rick,

Can you send me (or provide me with the URL) for the support documentation that explains the justification for the exemption threshold.

Michigan would like to receive an extension on commenting on this rule. We will be faxing our request, what is your fax number?

Thanks,

Joy Taylor Morgan,
Environmental Quality Specialist
Michigan Department of Environmental Quality
Air Quality Division
Toxics Unit
Constitution Hall - 1st Floor
525 W. Allegan
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CC: "Catherine Simon" <SIMONC@michigan.gov>



City of Cincinnati

Council

MELISSA AUTRY, *CLERK OF COUNCIL*
KATHY CALLOWAY, *DEPUTY CLERK*
FRANK A. JOHNSON, *DEPUTY CLERK*

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ABIGAIL IMM, *DEPUTY CLERK*
ROBERT NEELY, *DEPUTY CLERK*

October 7, 2004

Rick Carleski, Ohio EPA
Division of Air Pollution Control
122 S. Front Street
Columbus, Ohio 43215-6117

Dear Mr. Carleski:

Council of the City of Cincinnati, State of Ohio, at its session on October 7, 2004 passed the following Resolution:

As Clerk of Council, I hereby certify the following Resolution by Council of the City of Cincinnati State of Ohio, at its session on October 7, 2004:

Resolution 0084-2004

Resolving that the City of Cincinnati opposes the enactment of the Ohio EPA's proposed amendments to the Ohio Administrative Code 3745-31-03, known as "permit by rule" and "emissions threshold exemption rules," into law.

Sincerely,

Melissa Autry,
Clerk of Council



2004 OCT 14 PM 12:47

Rec'd by DAPC, OEPA

AAJ
JCM/RA

RESOLUTION NO. 84 -2004

RESOLVING that the City of Cincinnati opposes the enactment of the Ohio EPA's proposed amendments to the Ohio Administrative Code 3745-31-03, known as "permit by rule" and "emissions threshold exemption rules," into law.

WHEREAS, the Ohio EPA is proposing to amend Ohio Administrative Code (OAC) 3745-31-03 with two new rules, known as "permit by rule" and "emissions threshold exemption rules"; and

WHEREAS, no assessment has been made of the impact of the new regulations on ambient air quality; and

WHEREAS, no assessment has been made of the impact of the new regulations on the ability of the Greater Cincinnati Metropolitan area to meet federal standards for ozone and fine particulates, of which this area is currently in violation; and

WHEREAS, we believe that the resulting deregulation and elimination of public record keeping on numerous air pollution sources may hamper the City's ability to enforce a municipal clean air law, Title X; and

WHEREAS, the Ohio EPA has offered no assessment of the environmental impact of the proposed regulations, either on ambient air quality or on the area's ability to reduce ozone and particulate levels to comply with federal standards; and

WHEREAS, currently, numerous stakeholders are meeting to develop options for a compliance plan to meet the federal ozone standards. There has been much discussion on the merits of the e-check system for automobiles. No discussion has addressed the proposed regulations; and

WHEREAS, the regulation applies to "minor sources" -- sources that are considered "minor" under federal law because they are limited in their contribution to ambient air pollution and national air quality standards. These same sources are not necessarily "minor" in the communities and neighborhoods where they operate; and

WHEREAS, according to the Ohio EPA's estimates, up to 2800 existing printing shops, and 2800 auto body (paint) shops, will be exempt statewide. This does not estimate the number of facilities to be added in future. These kinds of facilities are often embedded in residential areas, and are the source of numerous air complaints locally; and

WHEREAS, the Ohio EPA is authorized to deny permits based on air quality, or other adverse environmental, social or economic impacts. Short of denial, the Ohio EPA can impose

terms and conditions in permits to provide for protection of human health and the environment; and

WHEREAS, local governments could no longer ask the State to condition or deny permits where facilities would harm human health, or have other adverse environmental, social or economic impacts. Nor will the agency be authorized to condition or deny permits in such a case; and

WHEREAS, the new regulation may reduce public participation. This rule would allow unlimited numbers of polluting sources to operate within the same community, without any notice to the public, with limited opportunity for the public to participate in the permitting process; and

WHEREAS, the Ohio Administrative Code currently requires that all members of the public (and local government entities) receive notice and an opportunity to comment on proposed permits to install (PTIs). Under the proposed regulations, exempt and permit by rule facilities need only submit a notification to the director; and

WHEREAS, under current regulations, sources are required to file permit to install applications. Under the proposed regulation, exempt sources would be required to submit (in addition to standard name, address, owner/operator, location) only a description of the equipment, and uncontrolled potential to emit (PTE) and expected actual emissions for each pollutant, per year; and

WHEREAS, according to officials at Hamilton County Department of Environmental Services, the new rules will cause up to one third of existing permits to be eligible for revocation, thus reducing income from permit fees by that proportion; now, therefore,

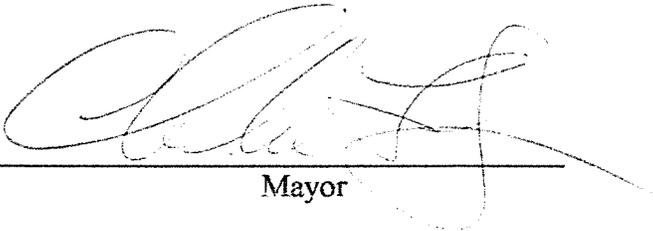
BE IT RESOLVED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City of Cincinnati opposes the enactment of the Ohio EPA's proposed amendments to the Ohio Administrative Code Section 3745-31-03, known as "permit by rule" and "emissions threshold exemption rules," into law.

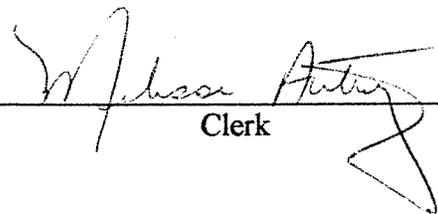
Section 2. That this resolution be spread upon the minutes of Council and copies sent to the South Western Ohio delegation, Governor Bob Taft, the following members of the Ohio Joint Committee on Agency Rule Review (JCARR): Sen. Jay Hottinger, Sen. Robert F. Spada, Sen. Robert Schuler, Sen. Mark Mallory, Sen. Ray Miller, Rep. Jamie Callender, Rep. Merle G.

Kearns, Rep. Jim Raussen, Rep. Fred Strahorn, and Rep. Kenneth A. Carano, Chris Jones,
Director of the Ohio EPA, and Rick Carleski of the Ohio EPA.

Passed October 6, 2004



Mayor

Attest 

Clerk



REGIONAL AIR POLLUTION CONTROL AGENCY

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October 13, 2004

Mr. Richard Carleski, PE
Ohio EPA - DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

Rec'd by DAPC, OEPA
2004 OCT 18 PM 12:36

Re: Comments on the Draft Emission Threshold and Permit-by-Rule Regulations

Dear Mr. Carleski:

As requested, the Regional Air Pollution Control Agency (RAPCA) is providing comments on the draft Ohio EPA rules pertaining to Emission Threshold and Permits-by-Rule. RAPCA submitted comments on a previous version of these draft requirements in March, 2004. We note that few, if any, of the concerns and suggestions made to Ohio EPA at that time are reflected in the current iteration of the rules. Therefore, we repeat our comments from March, 2004 and respectfully request that they be included as part of these present suggestions.

Before turning to our specific suggestions, we believe it is important to re-state that we believe the provisions of the emission threshold draft rule, if ever enacted, are bad for the environment. The provisions of this rule are fraught with negative environmental and enforcement implications that are self-evident by the attempts Ohio EPA have made to incorporate safeguards into the rules to account for eventual problems and to prevent circumvention. For years now, Ohio EPA has attempted to come up with elaborate mechanisms thru various rule additions or rule revisions, the effect of which is to exempt sources from permit review or otherwise reduce or eliminate permit requirements. Examples include the present exemption threshold rules, general permits, permits-by-rule, and template permits. There have been permit issuance efficiencies studies that have been conducted and recommendations made. RAPCA and others have suggested to Ohio EPA on a number of occasions in the past that it eliminate, reduce, or in some meaningful way, streamline the permit oversight function. For the ultimate sake of the entire air program, RAPCA implores the Ohio EPA to implement the specific administrative steps that are needed to expeditiously issue air permits.

A listing of RAPCA's additional, overarching concerns follows, namely:

The emission threshold rule will impede efforts to attain and maintain ambient air standards.

The provisions of the rule as drafted will exempt individual air contaminant sources, and air contaminant source projects, with actual emissions greater than the levels in columns "B" and "C", respectively. The effect of this draft rule is to exempt significant sources of air pollution from new source permit review. Significant portions of Ohio have been or will soon be designated as being in non-attainment for both ozone and particulate matter 2.5. Historical experience is such that many new sources are installed every year in Ohio that would qualify for the exemptions provided under Columns B and C of the draft rules. The effect is that numerous new sources will be installed every year throughout the state, most in the non-attainment areas, without benefit of new source permit review, assurances of satisfaction that Best Available Technology (BAT) will be in place, and without permits containing provisions for proper operation and maintenance of control equipment. While the non-attainment status of much of Ohio is clearly not entirely due to sources/projects proposed for exemption, RAPCA believes that the non-attainment status begs for continued close examination of all new sources in the future to ensure BAT and minimal emissions. Thus, we urge Ohio EPA to abandon the emission threshold exemption concept in its entirety.

The emission threshold rule will make it extremely difficult, and possibly impossible, to track new sources/projects throughout the state.

In Ohio, hundreds of new air contaminant sources are installed every year. Historically, Ohio EPA and the local air pollution control agencies have used the permit system as the mechanism to track the number, location, and emission consequence of all such new sources. This rule, if adopted and implemented, will create many of the same problems from a tracking standpoint as does the "PTO registration" program where eligible source owners submit emission data with a PTO application and oftentimes request to be placed on registration status. If eligible, these applications are normally placed on registration status rather than being issued full permit to operate status. Source owners are required to maintain compliance and eligibility for registration status. Over a period of years however, tracking is difficult, and these emissions units are lost for practical purposes since attempts to verify continued compliance and registration status eligibility are seldom, if ever, performed. For example, in the year 2001, RAPCA developed an enforcement case and was assisted by Ohio EPA and the Ohio Attorney's General Office that involved, in part, a single spray booth that had been placed on "registration" status in 1983. Over the course of several years, and unknown by nor reported to RAPCA, the source owner increased emissions from the source from less than 5 tons of organic compounds to 12 tons per year of HAP. The emissions increase from the spray booth on its own, and not accounting for other emissions units at the facility, resulted in a significant increase and made the facility subject to Title V permit requirements. There are no doubt many other emissions units in operation at facilities throughout Ohio that may have met the registration criteria at one time in the past, but

Mr. Carleski
October 13, 2004
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have effected operational or equipment changes over the years and no longer meet the criteria. There is presently no effective mechanism to identify these sources that should now be placed on full PTO status. PTO registration sources are at least entered into and tracked by the Ohio EPA computer permit system, which provides air pollution control agencies at least limited opportunity to review current operational practices during inspections and root out sources that require full PTO's. More frequent and more severe problems are likely to result from this draft rule provision that presently doesn't include a mechanism to track the exemptions. Finally, by not having complete facility file information regarding sources in operation at the various facilities, the exemptions will create enormous problems for the local and district air agencies in terms of fulfilling facility inspection commitments made to the U.S. EPA and determining if, when, and to what extent sources are subject to the malfunction and maintenance reporting obligations in OAC rule 3745-15-06.

The emission threshold rule will result in significantly increased probability of overlooked major New Source Review (NSR), Title V permitting, or applicability of Maximum Achievable Control Technology

The draft exemption levels in Columns B and C are so high that new sources are likely to be installed and operated without undergoing major NSR, Title V permitting, and MACT applicability determinations as required. It is easy to picture how source operators may not account for emissions from existing sources in determining the applicability of other regulatory programs. As drafted, the exemption rules would leave such determinations primarily to source operators. The project exemption levels in Column C are especially troublesome, in that the levels for VOC's, organic compounds, and lead are smack up against the PSD/NSR significance levels in other sections of OAC Chapter 31. Ohio EPA district offices and local air agencies in Ohio are not likely to have the necessary background information available to make such determinations accurately with the limited information source owners are required to provide. The result will be exposure to enforcement action from the U.S. EPA or environmental groups, or both for failure to undergo proper permitting and/or applicability determinations.

The emission threshold rule does not contain significant potential for resource savings by the local air agencies and Ohio EPA district offices.

Ohio EPA may be with the false impression that adoption and implementation of the emission threshold rule will result in significant resource savings to local air agencies and OEPA district offices. In theory, the provisions of the draft rule might lead one to think that manpower could be saved by regulatory agencies through reduced application review and permit writing. In fact, no such savings are likely to result in view of the administrative and enforcement implications associated with the rule. Administratively, the draft rule envisions that source owners must submit the information in OAC section 3745-31-03 (qq)(vi) regarding equipment description, control equipment, uncontrolled potential to emit, actual emissions, applicable rules, and more.

This must be reviewed by our agencies to verify exemption eligibility. The provisions of section 3745-31-03 (qq)(viii) provide for existing sources with PTI's and PTO's may request that such sources be evaluated under the threshold exemption criteria and the permits revoked if eligibility is established. All of these tasks take time. Also, as mentioned earlier, the exemption threshold rule will add to the inspection/facility compliance verification burden. And finally, section 3745-31-03 provides for enforcement action and assessments of monetary penalties in instances of non-compliance with the requirement to submit the required information. On par, the resource expenditure question appears to be a wash.

The emission threshold rule is fraught with significant non-compliance and enforcement implications, and should not be adopted.

It is obvious upon review of the draft rule provisions that Ohio EPA believes the potential is high for inaccurate or inappropriate emission threshold determinations, leading to significant non-compliance and enforcement. This high potential for non-compliance is evident by virtue of the attempt to include safeguards into the draft rule. For example, source owners must maintain records of uncontrolled potential to emit determinations for as long as the source is in operation. Enforcement action and provisions for assessment of administrative penalties are included for source operators that fail to submit the required information. Provisions have been made for likely future increases in emissions that go beyond the emission threshold levels. Source owners are put on notice that they shall not knowingly use the emission threshold exemption to install sources when they know that emission levels are likely to go above the Column B and C levels within two years. And finally, Ohio EPA proposes to explicitly reserve the right to take enforcement action against a source owner of a new source that was installed without a PTI/PTO, but which seeks to opt in under the emission threshold exemption. Taken in their entirety, these attempts to build in safeguards demonstrate that Ohio EPA believes the potential for non-compliance and thus negative environmental significance, is high.

The emission threshold rules, if adopted, will create resource issues for RAPCA.

Adoption of the emission threshold rules will clearly result in fewer new source permits being issued to sources in our jurisdiction. Fewer permits results in fewer resources. Ohio EPA will need to make up this loss of revenue.

Having said that, we offer the following general and specific comments regarding the actual wording of the draft rules:

General Comments Regarding the Emission Threshold Rule:

1. There should be one HAP threshold, such as 1 TPY, and sub-paragraphs (qq)(iii)(e) and (qq)(iv) should be removed. Most sources will be able to meet a single threshold, and the

addition of sub-paragraphs (qq)(iii)(e) and (qq)(iv) make the rule unnecessarily complex to implement. It would also simplify this rule greatly if emissions modeling-related language was removed, especially considering that Column C thresholds seem to exist so to allow source owners to avoid modeling requirements.

2. Sub- paragraphs (qq)(v) and (qq)(vi) are remarkably similar to a permit application and the requirements that would be included in a permit to install. These requirements seem to defeat the purpose of this rule. If Ohio EPA is concerned that district offices and local air agencies need to evaluate the application of this rule and thus require the same level of information as is presently included in a PTI application to be submitted, the rule is clearly too complex. Alternatively, if Ohio EPA feels that it must adopt some form of emission threshold exemption, the rule should be greatly simplified while at the same time reducing the emissions thresholds for exemption eligibility. This approach would require minimal information submission by industry, and would result in some true benefit. Similar rules in other States should be evaluated as part of this rule development process.
3. A requirement similar to (A)(4)(h)(v)(b)(i)-(iii) should be added in the general provisions of the emissions threshold exemption rule or in the beginning of OAC rule 3745-31-03 (A), such that an owner or operator electing to use the emissions threshold exemption is required to submit written notification to the appropriate DO/LAA, at least 60 days prior to installation of the source(s). In addition to the general information already listed the facility phone number and the facility contact name and phone number should be included. Additionally if we are to track these facilities, the owner or operator should be required to submit construction information similar to that in 31-03 (4)(j)(iv)(b).
4. Throughout the proposed revisions, the words "chemical compound" should be replace with "air contaminant", since the latter is a defined term in the OAC. Also, when references to the "director" are made we need to include the phrase "...or the appropriate Ohio EPA district office or local air agency". This inclusion will make it clear that locals and districts are synonymous with the director in implementing these rules. References to the director have been taken literally in many instances in the past with equipment maintenance and malfunction reports, PTI exemption requests, and portable plant relocations, etc., and it has created unnecessary delays in program implementation.

Specific Comments Regarding the Emission Threshold Exemption Rule:

1. (qq)(iii) - The text to this paragraph is missing.
2. (qq)(iii)(a) and (b) - The first sentence in (a) contains the phrase "total uncontrolled potential to emit". The word "total" implies that multiple sources are added together. If

this is the case, the language should be changed to “project” similar to (qq)(iii)(b).

The proposed OAC rule 3745-31-01(J) definition of “air contaminant source project” states that “...project means...one or more air contaminant sources and/or modifications to air contaminant source(s), each with an uncontrolled potential to emit less than Column B...” The proposed OAC rule 3745-31-03(A)(qq)(iii)(a) states that “(E)ach air contaminant source has either a total uncontrolled potential to emit (PTE) or actual emissions of less than... Column B...” These two statements are inconsistent and conflict with respect to actual emissions. We suggest removing the reference to actual emissions and the word “total” in OAC rule 3745-31-03(A)(qq)(iii)(a). Only the uncontrolled potential to emit should be evaluated against the thresholds in Column B and if a source meets that criteria, the reference to “actual emissions” is irrelevant.

In addition, the language in OAC rule 3745-31-01(J) states “...uncontrolled potential to emit of less than Column B...associated with a discrete production goal or objective where installation is scheduled to begin or has begun within any 12-month period...” will be problematic because of the inclusion of the 12-month period. Therefore, a project with a discrete production goal can be split into phases at least 12 months apart and avoid permitting. Perhaps “small” projects that would be exempt would likely be built within a 12-month period. Are there any major NSR or Title V permitting ramifications regarding this definition? Also, the term “discrete production goal or objective” has not, but must be clearly defined for purposes of this eligibility criteria.

3. (qq)(iii)(c) and (d) - The last sentence of each paragraph (“Sources of the chemical compound...counted as a reduction...if the egress parameters...are similar or better...”) implies that the facility will need to perform modeling, i.e., if the source has a higher stack but lower flow, which is better? We are not in favor of the requirement to perform modeling, especially considering that Column C thresholds seem to exist to avoid modeling requirements.

Additionally, we find the language in (qq)(iii)(c) - (e) to be very confusing and difficult to understand.

We suggest sub-paragraph (c) be replaced with the following:

The air contaminant source project has a controlled potential to emit of less than the threshold values listed in the following table. Other emission reductions of these air contaminants, made as part of the project, may be credited in the potential to emit calculation, if the egress parameters of the new or modified air contaminant sources are similar to or better (e.g., taller stack, higher exhaust gas flow rate, etc.) than those from the air contaminant sources with emissions being reduced.

We suggest sub-paragraph (d) be replaced with the following (assuming we understood the point of the paragraph):

The air contaminant source project has a controlled potential to emit of less than 1.0 ton per year for air contaminants listed in the 1.0 Ton Compound Cut-off Table contained in paragraph (A)(1)(qq)(xi). Other emission reductions of these air contaminants, made as part of the project, may be credited in the potential to emit calculation, if the egress parameters of the new or modified air contaminant sources are similar to or better (e.g., taller stack, higher exhaust gas flow rate, etc.) than those from the air contaminant sources with emissions being reduced.

We suggest sub-paragraph (e) be replaced with the following:

For air contaminants listed in the 10/2 Ton Compound Cut-Off Table found in paragraph (qq)(xii), the air contaminant source project shall:

- (I) have a controlled potential to emit of the stack portion of the air contaminant of less than 10.0 tons per year;*
- (ii) for all of the stack emissions of the air contaminant, meet the criteria under paragraphs (qq)(iv)(a) and (qq)(iv)(c) of this rule;*
- (iii) have a controlled potential to emit of the non-stack portion of the compound of less than 2.0 tons per year;*
- (iv) for all of the non-stack emissions of the air contaminant, meet the criteria under paragraphs (qq)(iv)(b) and (qq)(iv)(c) of this rule; and*
- (v) credit emission reductions of these air contaminants made as part of the project, if the egress parameters of the new or modified air contaminant sources are similar to or better (e.g., taller stack, higher exhaust gas flow rate, etc.) than those from the air contaminant sources with emissions being reduced.*

4. (qq)(iii)(e) - A source could meet this criteria, i.e, controlled PTE for a HAP under 10 TPY (thus uncontrolled PTE could be greater than 10 TPY and therefore classified as a major source), be exempt from a PTI and still be subject to Title V permitting. It is likely that significant sources will be exempt from an installation permit, but still be subject to the highest level of an operating permit? This same problem applies to source modifications.

It is not clear if the effects of the Emissions Threshold rule on the Air Toxics Policy have been evaluated. Since there is a modeling requirement for sources with emissions > 1 TPY, and this rule may now allow for the installation of a source emitting more than 1 TPY of an air toxic without a permit, the present toxic's policy must be updated to be consistent with this paragraph or withdrawn altogether.

5. (qq)(v)(b) - There are no provisions in the draft rule for the operation and maintenance of air pollution control equipment to be monitored for on-going operation and compliance. It is also not clear if the malfunction reporting provisions of OAC rule 3745-15-06 apply to sources that would be covered by the emissions threshold rule.
6. (qq)(v)(d) - This term indicates that an actual production constraint could be necessary to meet the eligibility criteria. In the event there are projects where an actual production constraint does exist, the results of the production constraint will be reflected in the actual or controlled potential emissions calculations. A major deficiency in these rules is that there is absolutely no mechanism available to make such production constraints enforceable. The draft rules also contain no provisions for establishing the control device operating parameters necessary to assure continuous, ongoing compliance.
7. (qq)(vi) - We are unsure what is meant by the statement "prior to installation". How much prior? If there is information to be reviewed by district offices and local air agencies, a specified time period must be associated with the term "prior". Otherwise we will be receiving faxes of information on the day installation is to begin, which is not acceptable. Also, notification of commencement of construction and start-up of the unit(s) to the DO/LAA's having jurisdiction and responsibility for the area they are installed in is not, and must be, provided for.

Where is the standard OEPA form? All of the DO/LAA's should use the same standardized form to avoid confusion and inconsistencies throughout the State, so the option to deviate should be removed.

8. (qq)(vi)(a) - The facility contact's phone number should be added to (a).
9. (qq)(vi)(c) - How will portable sources be handled?
10. (qq)(vi)(f) - Controlled potential emissions should also be included since the rule is partially based on controlled potential emissions. Also, they should be required to submit the supporting calculations.
11. The previous draft of the emission threshold rule included the following statement in (qq)(vii):

"Nothing in this paragraph shall be construed to exempt any air contaminant source from requirements of the federal Clean Air Act, including being considered for purposes of determining whether a facility constitutes a major source or is otherwise regulated under Chapter 3745-77 of the Administrative Code or any requirement to list insignificant activities and emission levels in a Title V permit application. In addition, this rule does

not exempt any air contaminant source that is a part of the installation of a major stationary source, as defined by OAC 3745-31-01, or a major modification, as defined by 3745-31-01.”

The omission of this statement is significant. We suggest reinserting this paragraph in OAC 3745-31-03 (A)(1), since this applies to all of the permanent permit to install exemptions.

12. (gg)(viii) - The allowance to revoke PTIs and PTOs if a source is eligible for this exemption does not make sense, and is inconsistent with the manner in which the PTI registration rule was implemented in that there was no retroactive application of those rules. The processing of a massive number of PTI and PTO revocations would be a huge resource burden on district offices and local air agencies, and will result in an additional backlog of work. The process for executing permit revocations was originally planned to be done by PIDM, and the work should not be re-assigned to the DO/LAAs. The best option is not make the emission threshold exemption retroactive to permits issued prior to adoption of the rules. Another possibility would be, to include in the rules an option to transition to this exemption from a PTI or PTO such that, the PTI and/or PTO is terminated at the point when the permitting authority issues a letter stating the unit is eligible for the exemption.

Permits By Rule General Provisions 3745-31-03 (A)(4):

1. A requirement similar to (A)(4)(h)(v)(b)(i)-(iii) should be added in the general provisions of the permit-by-rule or in the beginning of OAC rule 3745-31-03 (A), such that an owner or operator electing to use the permit-by-rule exemption is required to submit written notification to the appropriate DO/LAA, at least 60 days prior to installation of the source(s). In addition to the general information already listed the facility phone number and the facility contact name and phone number should be included. Additionally if we are to track these facilities, the owner or operator should be required to submit construction information similar to that in 31-03 (4)(j)(iv)(b)(i)-(iv).
2. If we stick with the PTI and PTO revocation option, this is a term that could be listed in the general provisions, such that it applies to all of the exemptions and only needs to be mentioned once vs. duplicating it in each rule. Although we make this suggestion, we still believe an easier way to transition from needing a permit to being exempt would be to address it in the rule. See comment #10 under the Emission Threshold section.
3. (4)(a)(ii) - How will the DO/LAA's be expected to track deviation reports from facilities exercising the PBR exemption, if we don't know they are out there? (This statement may be irrelevant if the issue in comment #1 is addressed.) It does not make sense for us to

require negative deviation reports for operations operating under the requirements of a PBR. Exceedance reporting within 30 days, if the permittee exceeds the levels specified in the PBR, should be established and makes sense.

4. We suggest combining (4)(a)(i) and (4)(a)(iii), such that all of the record keeping requirements are in the same place. Also, it seems reasonable to allow the owner or operator to dispose of records retained after five years. But we need to ensure the company always has five years worth of information available for an inspector to review, so they can confirm they still satisfy the criteria of the PBR. Otherwise, we will not have any record of the evaluation and not be able to establish compliance with the eligibility criteria.
5. Include this paragraph (A)(4)(g)(vii)(a) in the general provisions, such that it applies to all of the permit-by-rule exemptions.
6. Although, the emergency electrical generators PBR is not proposed to change, we suggest incorporating (37.3 kW) after 50 horsepower, in the OAC rule 3745-31-03 (A)(4)(b) for clarification.

Auto Body Refinishing

1. (g)(i)(f) - RAPCA believes that egress point-related information is unnecessary. No other Permit-By-Rule exemptions contain egress point-related information.

Boiler and Process Heater

1. (j)(iii) - This requirement refers to "unit(s)" while the rest of the rule refers to a single unit. This implies, for this requirement, that this monitoring and record keeping can be combined.
2. (j)(iv)(b)(v) - The reference to the type of fuel(s) fired should be removed because the criteria states an owner or operator is only eligible for this PBR if the unit burns only natural gas.
3. (j)(v)(a) - What happens if the AP-42 emission factors change? Would the rule need changed as well?

Small Printing Facility

1. (k)(i)(b) - The table of applicable rules contains OAC rule 3745-21-07(G), which is proposed for revisions. This table is not consistent with the proposed, revised OAC rule

3745-21-07, i.e., the 8 pounds per hour requirement will be removed.

2. (k)(iii)(b) and (c) - These should be combined as follows:

(b) If no photochemically reactive materials are employed in the facility operations, the owner or operator of the printing facility shall maintain annual records at the facility that list the following information for each graphic arts material...

Mid-Size Printing Facility

1. (k)(i)(b) - The table of applicable rules contains OAC rule 3745-21-07(G), which is proposed for revisions. This table is not consistent with the proposed, revised OAC rule 3745-21-07, i.e., the 8 pounds per hour requirement will be removed.

2. (k)(iii)(b) and (c) - These should be combined as follows:

(b) If no photochemically reactive materials are employed in the facility operations, the owner or operator of the printing facility shall maintain annual records at the facility that list the following information for each graphic arts material...

We do not have any comments on the PBRs proposed for the gasoline dispensing facilities.

In summary, we support the proposed permit-by-rule provisions, with the exceptions noted herein. We continue to strongly disagree with the proposed emissions threshold exemption concept and draft rule language. In fact, we encourage Ohio EPA to abandon the emissions threshold exemption proposal altogether. Ohio EPA still has not developed any technical support on the environmental significance that would follow adoption and implementation of the emissions threshold rules. We firmly believe that Ohio EPA should focus its resources on the practice of actually issuing permits. This can and should be accomplished thru provision of the necessary guidance and training in the preparation of permits, and significantly reduce the line-by-line, word-by-word close scrutiny and review that has become the norm associated with each and every permit recommendation. By implementing these fundamental steps, Ohio EPA would take major steps towards addressing complaints from the regulated community, environmental groups, and other affected parties about routine, lengthy delays in the issuance of permits in Ohio. This would allow a significant reduction in the renewal permit to operate backlog as well. In short, the problem is best addressed by greatly reduced and streamlined permit oversight activities by DAPC, and not by devising new exemptions to carve industry out of the permit program.

As an initial step towards implementing reduced DAPC permit oversight, perhaps the concepts associated with the draft emission threshold rules could become internal guidance for DAPC in performing its oversight function. Specifically, if a permit is recommended for final issuance by a

Mr. Carleski
October 13, 2004
Page 12

associated with the draft emission threshold rules could become internal guidance for DAPC in performing its oversight function. Specifically, if a permit is recommended for final issuance by a district office or local air agency, and the permitted project meets the criteria of the emissions threshold exemption "policy", then the permit would be automatically issued without further review or delay by DAPC. This would be consistent with the proposed approach for issuing general permits and permits under "permit-by-rule". This approach would allow for the type of review and eventual permit that is commensurate with environmental need. It would also allow for a much more streamlined permit issuance process, and it would allow industry to receive its permits in a much more timely manner versus providing for environmental chaos by allowing industry a free reign to install sources with significant emissions levels purely on its own regulatory determinations.

Thank you for the opportunity to share our views on this very important regulatory proposal. Please contact us if you have any questions about our specific concerns. We would appreciate a response from OEPA on our issues.

Sincerely,



Curt Marshall
Abatement Unit Supervisor



Jennifer Marsee
Permit Group Supervisor

cc: John Paul, RAPCA Supervisor
Bob Hodanbosi, OEPA
P&E Committee via email
Genevieve Damico, U.S. EPA Region V

HAMILTON COUNTY
ENVIRONMENTAL
S E R V I C E S

2004 SEP -8 PM 3: 32

September 2, 2004

Mr. Richard Carleski, PE
Ohio EPA - DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: Comments on the Draft Permit Exemption Threshold and Permit-by-Rule Regulations

Dear Mr. Carleski:

As requested this Agency is providing comments on the draft Permit Exemption Threshold and Permit-by-Rule regulations. For ease of review we have separated the comments for each regulation. The following are the comments for the Permit Exemption Threshold:

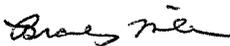
1. Under qq(ii)(b), if you have two emissions units (air contaminant source project) controlled with fabric filters and their PTE for PM is 1.0 TPY each and the uncontrolled PTE for PM is 100 TPY (99 % control efficiency), then it appears they would not be exempt because the uncontrolled PTE is greater than 25.0 TPY. Is this the correct interpretation of the draft rule?
2. In qq(vii), when will the Director require submittal of a permit to install if a company exceeds the exemption threshold? If you exceed the exemption threshold will the exemption still apply?
3. In qq(viii), Ohio EPA proposes to allow revocation of permits to install. Since Best Available Technology requirements are federally enforceable, what legal mechanism does Ohio EPA plan to use to terminate these federally enforceable permits to install? Also by removing emissions limitations from permits to installs for VOC and NOx emissions, could this be considered backsliding since many areas are non-attainment for ozone.
4. In qq(vi) it states that "Failure to submit the above information as required does not result in the automatic loss of the exemption". With this statement in there, what incentive is there for a company to complete the form?

The following are the comments on the Permit-by-Rule regulation:

1. In term (4)(a)(ii) it requires anyone who is using the permit-by-rule exemption to submit annual reports even if they do not have deviations of the permit-by-rule requirements. If these facilities are not required to notify this Agency they are exempt, how do we know which facilities have to submit these reports. This Agency will have no way of knowing which facilities must submit annual reports which state they have no deviations.
2. For small and mid-size printing facilities, how do you avoid the requirements of 40 CFR 63.820(a)(2) if the potential is greater than 10 TPY of any single HAP and 25 TPY of combined HAP's. This rule applies if the potential HAP emissions are greater than 10/25 TPY but the actual are less than 10/25 TPY.
3. For the auto body refinishing permit-by-rule, there is a HAP and VOC limit in the applicable emissions limitation section but in the record keeping there is only record keeping for VOC emissions. If there is no HAP's records, how does a company show compliance with the HAP emissions limitation?
4. When determining the VOC content of the coatings for coating operations, Ohio EPA requires Method 24 or formulation data wording in the test section. How is a company supposed to determine the VOC content of the coatings if it is not outlined in the testing section? This comment applies to the auto body refinishing and printing permit-by-rules.
5. In (4)(g)(i)(b), what is considered a job for auto body shops?
6. In OAC rule 3745-21-09(R) and (DDD) it lists the emissions as VOC but in the permit by rule terms for both Stage I and Stage II facilities the applicable emissions limitation is for OC. Shouldn't the emissions be in term of VOC to be consistent with the rule?
7. We have facilities which employ propane as a regular or back-up fuel for their boiler. Does Ohio EPA plan to include the use of propane for the permit-by-rule or General Permits for boilers?

If you have any questions on these comments please feel free to contact me.

Sincerely,



Bradley Miller

cc: Mike Hopkins - Ohio EPA - DAPC

Franklin County Board of Health

Memorial Hall, 280 East Broad Street, Columbus, OH 43215-4562

Health Commissioner

Susan A. Tilgner,
MS, RD, LD, RS

Board Members

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Joseph P. Weaver

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CORRECTED COMMENTS

October 14, 2004

Ohio Environmental Protection Agency
Attention: Rick Carleski
P.O. Box 1049
Columbus, Ohio 43204

RE: PROPOSED CHANGES TO OAC 3745-31-03

I am submitting the following comments and concerns as the Special Projects Coordinator for Franklin County Board of Health. We are concerned about the proposed changes to Chapter 3745-31 of the Ohio Administrative Code, and most specifically to Section 3745-31-03. It appears that the changes in the draft rules essentially eliminate OEPA's oversight of small emission sources, and they could have an adverse effect upon communities such as ours that are in required to become compliant with USEPA's PM 2.5 and ozone standards.

Our comments upon the draft rules follow:

- The draft rules remove most regulatory oversight for "minor emission sources" from OEPA, and the agency further proposes to exempt some emission sources from all regulation. The draft rules establish Permit By Rule (PBR) criteria for minor sources in 6 different categories. Once they are in the PBR program, these sources will not be permitted, not be inspected, and they will not be required to submit documentation of compliance to the agency. Thus, compliance with the standards for exempt and / or PBR sources would become voluntary. OEPA will not know if a PBR unit exceeds its emission limits unless it is compelled to investigate the unit via community or agency complaints.
- Many counties in Ohio are in non-attainment for PM 2.5 and ozone. Because the draft rules remove thousands of minor emission sources, the available emissions data that can be used by communities that are planning attainment strategies will be drastically reduced, which will hamper efforts to calculate valid precursor emissions levels. Further, since EPA will not be collecting data from minor sources, planners will have to incorporate an "exceedence estimate" into their total emission calculations. Clearly, if a large number of units are producing 1 tpy (or more) of vocs within a non-attainment areas, the net impact on ozone and PM 2.5 will be significant. The draft rules will seriously impede the efforts of local regions to reach attainment.

Rec'd by DAPC, OEPA
2004 NOV - 1 AM 10: 21

- If the draft rules are adopted as they are now written, EPA will effectively lose its ability to take enforcement action against minor sources. EPA may believe that it can use its nuisance powers to compel a minor source to stop producing offensive or noxious odors. However, EPA has traditionally been reluctant or unwilling to use its nuisance powers to their full advantage. Further, it is unclear whether EPA could use its nuisance authority on an exempt or PBR source, since they cannot use it on de minimus sources.
- EPA is proposing to exempt facilities that emit Hazardous Air Pollutants (HAPs) in amounts below a threshold value that is set by the draft rules. The numbers appear to be arbitrary and there is no commentary associated with the rule to explain how the thresholds were established.
- The draft rules propose to increase the regulatory threshold for NO_x and SO_x from 1.8 to 10 tpy. This change could have devastating consequences for communities that are in non-attainment for ozone, since sulfur and nitrous oxides are the primary precursors to ozone production. The oxides are also suspected to have an adverse effect upon people who suffer with asthma. Thus the increase in NO_x and SO_x may have a significant effect upon the public health.
- Because they are unregulated, many new minor sources may appear, creating a net increase in undocumented pollution and nuisance odors in a community.
- The draft rules exempt units from the permitting process if they emit less than 260 lbs / yr of mercury. Given the toxicity of mercury and the serious health effects that are known to arise from exposure to very low levels of the metallic vapor, it appears that individuals who live near one of the exempted sources may be exposed to levels of metallic mercury that far exceed the OSHA and NIOSH TLV / TWA.

We hope that you will consider these issues as you prepare the draft permitting rules for review. We do not feel that they represent good public policy or that they are protective of the public health.

Sincerely,



Paul Wenning, R.S
Special Projects Coordinator

c: MORPC
Clean Fuels Coalition
Region 5, USEPA

Franklin County Board of Health

Memorial Hall, 280 East Broad Street, Columbus, OH 43215-4562

2004 OCT 13 PM 5:33

Health Commissioner

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October 13, 2004

Ohio Environmental Protection Agency
Attention: Rick Carleski
P.O. Box 1049
Columbus, Ohio 43204

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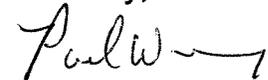
Our comments upon the draft rules follow:

- The draft rules remove most regulatory oversight for "minor emission sources" from OEPA, and the agency further proposes to exempt some emission sources from all regulation. The draft rules establish Permit By Rule (PBR) criteria for minor sources in 6 different categories. Once they are in the PBR program, these sources will not be permitted, not be inspected, and they will not be required to submit documentation of compliance to the agency. Thus, compliance with the standards for exempt and / or PBR sources would become voluntary. OEPA will not know if a PBR unit exceeds its emission limits unless it is compelled to investigate the unit via community or agency complaints.
- Many counties in Ohio are in non-attainment for PM 2.5 and ozone. Because the draft rules remove thousands of minor emission sources from the Toxic Release Inventory, the available emissions data that can be used by communities that are planning attainment strategies will be drastically reduced, which will hamper efforts to calculate valid precursor emissions levels. Further, since EPA will not be collecting data from minor sources, planners will have to incorporate an "exceedence estimate" into their total emission calculations. Clearly, if a large number of units are producing 1 tpy (or more) of vocs within a non-attainment areas, the net impact on ozone and PM 2.5 will be significant. The draft rules will seriously impede the efforts of local regions to reach attainment.

- If the draft rules are adopted as they are now written, EPA will effectively lose its ability to take enforcement action against minor sources. EPA may believe that it can use its nuisance powers to compel a minor source to stop producing offensive or noxious odors. However, EPA has traditionally been reluctant or unwilling to use its nuisance powers to their full advantage. Further, it is unclear whether EPA could use its nuisance authority on an exempt or PBR source, since they cannot use it on de minimus sources.
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We hope that you will consider these issues as you prepare the draft permitting rules for review. We do not feel that they represent good public policy or that they are protective of the public health.

Sincerely,



Paul Wenning, R.S
Special Projects Coordinator

c: MORPC
Clean Fuels Coalition
Region 5, USEPA

From: "Robert Dominak" <DominakR@neorsd.org>
To: <rick.carleski@epa.state.oh.us>
Date: 9/15/04 2:46PM
Subject: 3745-31-03 Comments

Hi Rick,

In the attached file, you will find the Northeast Ohio Regional Sewer District's comments concerning the proposed Emissions Threshold Exemption and the Permit-By-Rule Exemptions.

The letter is also being sent to you via U.S. Mail.

Please do not hesitate to contact me if you have any questions or require additional information concerning the contents of the attached letter.

Thanks,

Bob Dominak
Residuals & Air Emissions Manager
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, Ohio 44115

Tel: 216-881-6600 ext. 6405



Rec'd by DAPC, OEPA

2004 SEP 20 AM 10: 52

VIA ELECTRONIC AND REGULAR U.S. MAIL

September 13, 2004

Richard J. Carleski, P.E.
Ohio Environmental Protection Agency, DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: *Proposed Emissions Threshold Exemption and Permit-By-Rule Exemptions*

Dear Mr. Carleski:

The Northeast Ohio Regional Sewer District (NEORS) is an independent political subdivision of the State of Ohio that provides wastewater treatment services for 1.1 million residents and businesses located in the City of Cleveland and 60 suburban communities. The NEORS owns and operates three wastewater treatment facilities, known as the Easterly, Southerly, and Westerly wastewater treatment plants. These facilities contain various air emissions sources (e.g., boilers, emergency generators and storage tanks) that could be affected, directly or indirectly, by Ohio EPA's proposed changes to OAC rule 3745-31-03.

The NEORS supports the proposed emissions threshold exemption from Ohio EPA's permit to install ("PTI") process. Excluding small, insignificant air emission sources from the PTI process will create much needed operational flexibility by eliminating the paperwork, staff time, delays and expenses associated with the permitting of these very minor sources.

It is our understanding that the proposed steps to qualify for an emissions threshold exemption would include determining whether or not:

- (1) The source is subject to any NESHAP, NSPS or MACT standard,
- (2) The source is subject to permit-by-rule or permanent exemption,
- (3) The actual emissions or the uncontrolled or controlled potential to emit (PTE) for the contaminant source are below the source threshold levels for CO, NO_x, SO₂, PM, PM₁₀, OC, OM and Lead as contained in table 3745-31-03(qq)(x),
- (4) The PTE/actual emissions for the project as a whole are below the separate threshold levels for CO, NO_x, SO₂, PM, PM₁₀, OC, OM and Lead,
- (5) The controlled emissions from the completed project are less than the separate threshold levels of the 14 chemicals listed on table 3745-31-03(qq)(iii)(c), and

- (6) The project emit less than 1 ton per year of each of 420 discrete compounds listed on table 3745-31-03(qq)(xi). If the 1 ton per year criteria is not met, then the project would have to emit less than 10 tons of stack emissions and 2 tons of fugitive emissions of 37 compounds listed on table 3745-31-03(qq)(xiii), along with meeting certain egress and property line criteria.

The only concern that the NEORSD has with the proposed emissions threshold exemption is with the requirements contained in item 6. The NEORSD recommends that Ohio EPA utilize the list of Hazardous Air Pollutants (HAPs) as contained in Section 112 of the Clean Air Amendments (CAA) of 1990 instead of the pollutants listed in the Compound Cut-Off Tables contained in 3745-31-03(xi) and 3745-31-03(xii). Congress adopted the CAA-HAPs list, which consists of 188 pollutants, with clear mechanisms for revision by USEPA to provide a uniform nationwide basis for protecting human health from toxic air contaminants.

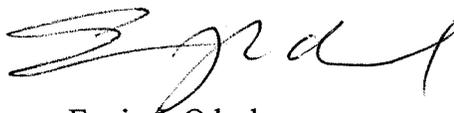
The regulated community has used the CAA-HAPs list for 14 years to identify applicability with the Part 63 MACT standards. As a result, Ohio's regulated community is familiar with the HAP compounds that are associated with the sources that they operate. Ohio EPA is proposing to require the regulated community to evaluate emissions of approximately 240 additional compounds before they can qualify for a PTI exemption. As proposed, the rule requires substantially more information for sources seeking an exemption than would be required to obtain a PTI.

As a result, the NEORSD is requesting that Ohio EPA reconsider the proposed requirements contained in item 6.

The NEORSD also supports Ohio EPA's proposed additional permit-by-rule exemptions. Excluding the six additional low-emitting air emission sources from the PTI process will create much needed operational flexibility by eliminating the paperwork, staff time, delays and expenses associated with the permitting of these sources.

Please do not hesitate to contact Robert Dominak (NEORSD - Residuals & Air Emissions Manager) either by e-mail (dominakr@neorsd.org) or by telephone (216-881-6600 ext. 6405) if you have any questions or require additional information concerning the items contained within this letter.

Sincerely,



Erwin J. Odeal
Executive Director

rpj

3745-31-03

From: Bill Juris
To: Rick Carleski
Date: 10/12/04 4:58PM
Subject: Comments on draft OAC rule 3745-31-03

See attached.

Comments on draft amendments to OAC rule 3745-31-03

Permit-By-Rule Questions and Answers:

(1) This document provides an excellent overview of the intent and purpose of the permit-by-rule (PBR). This document can be improved by including more information on 5-year recordkeeping and annual reporting; and highlighting such information with a specific question on the records and reporting.

Rule Synopsis:

(1) For the emissions threshold rule revisions, it would be helpful to the reader to include information on what is meant by controlled PTE, uncontrolled PTE, and actual emissions. Also, it would be helpful to include a table id (e.g., Table A or Table 1) when referring to a specific table.

(2) Under the "Additional Permit-by-Rule Provisions" section, a more detailed description of the new provisions would be helpful. Also, it should be noted that there would be a new annual reporting requirement for the existing 5 PBR categories. Although this last point is noted at the end of the rule synopsis, it would help to see it under this section as well.

(3) Regarding auto body refinishing PBR, it would be helpful to include information on the federal VOC rule pertaining to VOC content of automobile refinishing coatings under Subpart B of 40 CFR 59. Although the federal rule is enforced by USEPA at manufacturers and importers, and is not included in permits issued by Ohio EPA, it would indicate that VOC emissions are being regulated to some degree anyway.

(4) Regarding GDFs with Stage I Controls PBR, shouldn't there be recordkeeping on the type of Stage I equipment and any Stage I equipment maintenance/repairs? Also, in order to provide a PBR for "existing" exempted facilities, shouldn't there be a provision on this? I am not aware of any SIP-related inspection commitment for the Stage I only counties. However, annual reporting under this PBR would help to ensure continued compliance in case there is no inspection.

(5) Regarding GDFs with Stage I and Stage II Controls PBR, shouldn't there be recordkeeping on the type of Stage I/II equipment and any Stage I/II equipment maintenance/repairs? Also, in order to provide a PBR for "existing" exempted Stage I and/or Stage II facilities, shouldn't there be a provision on this?

(6) Regarding the gas-fired boiler/heater PBR, the applicability section indicates applicability for process heaters. This can be potentially confusing for NSPS-regulated sources, which do not include process heaters. Natural gas-fired units regulated under Subpart Dc are subject to daily fuel usage records and semiannual reporting. However, USEPA does allow monthly fuel usage records and annual reporting for natural gas-fired units under this subpart per various applicability determinations. Also, in the event the natural gas usage of an individual Subpart Dc emissions unit cannot be determined due to a single gas meter serving various gas-fired units, USEPA allows fuel usage to be estimated based on an apportionment associated with heat input capacities. Enclosed for your reference are several applicability determinations pertaining to

natural gas-fired emission units subject to Subpart Dc. Does this PBR include process heaters? Suggest that the status of process heaters under this PBR be explicitly stated along with a definition.

(7) Regarding mid-sized printing facility PBR, change "10 tons/year" to "25 tons/year" for VOC and change "10 tons/year" to "12.5 tons/year" for combined HAP.

(8) Regarding the clarification of the current deep fat fryer exemption, more information on what is meant by large scale production lines would be helpful. Suggest that an example be inserted here and possibly in the rule itself (as a comment).

OAC Rule 3745-31-03:

(1) Par. (A)(1)(h): See item (8) above for suggestion.

(2) Par. (A)(1)(l)(iii), (iv), and (v): Suggest that 19,815 gallons be rounded off to a number of significant digits corresponding to 75 cubic meters; that 39894 gallons be rounded off to a number of significant digits corresponding to 151 cubic meters, that 2.176 pounds per square inch be rounded off to three significant digits to correspond to 15.0 kilopascals; and that 0.508 pounds per square inch be rounded off to two significant digits to correspond to 3.5 kilopascals.

(3) Par. (A)(1)(ff): Insert a comment to refer the reader to the PBR categories in paragraphs (A)(4)(h) and (A)(4)(i) of this rule.

(4) Par. (A)(1)(qq): In general, provide definitions for controlled PTE, uncontrolled PTE, and actual emissions.

(5) Par. (A)(1)(qq)(v)(d): Are the production constraints associated with actual emissions, controlled PTE, or uncontrolled PTE?

(6) Par. (A)(1)(qq)(v)(f): Do the uncontrolled PTE and expected actual emissions include constraints? Is controlled PTE missing?

(7) Par. (A)(4)(g)(i)(a) - (c): Can't these three criteria be simply reduced to just the 3,000 gallons criterion, which is the most important one?

(8) Par. (A)(4)(g)(i)(e): Suggest that this be simplified to just HVLP spray equipment and electrostatic spray equipment. Also, conventional air spray equipment should be specifically not allowed. Any reference to 65% transfer efficiency confuses the enforcement of this rule. Are all HVLP spray equipment and electrostatic spray equipment subject to 65% transfer efficiency? suggest that definitions be included. For further information on transfer efficiency see http://www.ronjoseph.com/Q&A/spraygun_TE_q2.htm which states: "There is a general misconception in industry that HVLP or electrostatic spray guns automatically yield high transfer efficiencies. Because of the wording that has been used in many air pollution regulations, there is a general belief that HVLP and electrostatic spray guns yield transfer efficiencies in excess of 65%. This is incorrect! It is true that HVLP and electrostatic spray guns, when properly used, are

more efficient than conventional air atomizing spray guns, but their improved efficiency has no relation whatever to the 65% value that is often quoted in regulations and vendor literature." Also, see <http://ozone.aqmd.gov/comply/shoptalk/absig.html>.

(9) Par. (A)(4)(h)(i)(d): Suggest that a gasoline throughput associated with the Stage I exemption be stated as well to complement an exemption indicated under (A)(4)(h)(i)(c).

(10) Par. (A)(4)(h)(iii) and (iv): For the operational restrictions and monitoring/recordkeeping requirements, suggest that the provisions under 21-09(R) be referenced instead if legally possible. This would accommodate any future changes to 21-09(R).

(11) Par. (A)(4)(i)(i)(c): Allow provision for exemption similar to (A)(4)(h)(i)(c)

(12) Par. (A)(4)(i)(i)(e): Suggest that a gasoline throughput associated with the Stage I and Stage II exemptions be stated as well to complement any exemptions indicated under (A)(4)(i)(i)(c) and (A)(4)(i)(i)(d).

(13) Par. (A)(4)(i)(v)(b): Add a sub-paragraph (vi) after (v) for an optional state II exemption pursuant to paragraph (DDD)(4) of rule 3745-21-09 of the Administrative Code as specified in paragraph (A)(4)(i)(v)(c) of this rule.

(14) Par. (A)(4)(i)(vi)(c): Is this paragraph needed? If so, then emission factors associated with Stage I and Stage II exemptions should be stated.

(15) Par. (A)(4)(i)(iii) and (iv): For the operational restrictions and monitoring/recordkeeping requirements, suggest that the provisions under 21-09(DDD) be referenced instead if legally possible. This would accommodate any future changes to 21-09(DDD).

(16) Par. (A)(4)(j): Title includes process heater, but process heater is not stated elsewhere and is not defined. See item (6) under rule synopsis comments. This should be clarified.

(17) Par. (A)(4)(j)(ii): The table entry for 40 CFR Part 60, subpart Dc should be clarified to exclude process heaters if process heaters are included under this PBR

(17) Par. (A)(4)(j)(iii)(b): For units that are subject to 40 CFR Part 60, subpart Dc, the total amount of natural gas can be based on apportionment of facility total natural gas usage using heat input capacities. See item (6) under rule synopsis comments.

(19) Small and mid-size printing facility PBR: Suggest that purchase records or usage records be allowed similar to the auto body refinishing facility PBR.

From: "Staci Putney" <staci@theoec.org>
To: <rick.carleski@epa.state.oh.us>
Date: 10/13/04 11:47AM
Subject: Comments on OAC 3745-31-03

Mr. Carleski,

Please find attached the Ohio Environmental Council's interested party comments on the draft rule changes to OAC 3745-31-03. A hard copy is in the mail.

Thank you for allowing us the opportunity to comment.

Staci Putney McLennan

Staci R. Putney McLennan

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COMMENTS OF THE OHIO ENVIRONMENTAL COUNCIL IN RESPONSE TO
O.A.C. 3745-31-03 ISSUED TO INTERESTED PARTIES

As an initial matter, the Ohio Environmental Council (OEC) reminds the Director that his authority under R.C. Chapters 3745 and 3704 to issue, rescind or adopt rules is limited to the *prevention, control* and *abatement* of air pollution, not to the **exemption** of activities that result in air pollution. Draft rule 3745-31-03 deals exclusively with granting exemptions to activities that result in an increase of air contaminants and thus constitutes an unlawful activity on the part of the Director.

OEC also reminds the Director that nonattainment designations for ozone and particulate matter have been made for most of Ohio by U.S. EPA. As the Director knows, Ohio has to attain compliance with the NAAQS "as expeditiously as possible." OEC cautions the Director that exempting pollution causing activities for the sake of permitting "efficiency" delays Ohio's compliance with the NAAQS. Focusing this rule making process on "permitting efficiency" at the expense of improving and enhancing air quality constitutes an abdication of Ohio EPA's duty to improve and enhance air quality. OEC recommends that instead of adopting this strategy (permitting efficiency), the Director (and the Governor) address the problem of air pollution from a different perspective.

OEC provides the following general comments that apply to the whole rule making process:

1. The proposed rule effectively eliminates any notion of "minor source review." This is especially troubling since Ohio EPA during the course of its "new source review discussion group" meetings kept countering raised concerns about changes to the major new source review program with the response "but there will still be minor new source review." Proposed rule 31-03, however, basically exempts all minor new source activities from permitting.
2. Although much of the draft rule requires reporting and record keeping, there is no requirement that the reports must be certified. In other words, the rule should include language requiring a responsible officer to certify that the information and reports being submitted are true and accurate to the best of their information and belief. This certification must also be subject to perjury.
3. Exceedance reports should be submitted on a quarterly basis rather than on an annual basis. Historically, Ohio EPA has required quarterly reports in order to better assess trends and determine whether enforcement action is required. Annual reporting does not afford Ohio EPA this opportunity.
4. The draft rule does not address the situation where an exceedance occurs. What happens then? Is the entity required to do anything? Does Ohio EPA expect the submission of a PTI application? Historically, Ohio EPA has required the submission of a PTO application for sources that had received a variance or were otherwise exempt.

5. The draft rule allows the entity to opt in to the permit by rule category, thereby making their operations exempt from the permitting requirements. Ordinarily, issuance of a permit, replete with control requirements, reporting and record keeping and applicable emissions limits, would be published in the weekly review so that parties “adversely affected” would be afforded notice in the event they wished to lodge an appeal with ERAC. However, the draft rule makes opting in to the permit by rule exemptions secret and not public. Some type of publication in the weekly review should be made for all exemption requests and all PTI revocation requests.

6. It should be made expressly clear that even though the rule exempts these sources from “permitting” requirements, “all other applicable requirements” such as emissions limits, control requirements, testing, reporting and record keeping would still apply. Only some of the permit by rules or permanent exemption categories contain such language.

7. There is a blatant inconsistency in applicable emissions limitations for HAPs. Some sources are exempt even though they exceed major threshold categories. Ohio EPA needs to explain how it derived these threshold levels for HAPs and should be consistent across all source categories. In addition, none of the “permanent exemption thresholds” or the PBRs refer to air toxics. What is the impact on air toxics that these new exemptions will have?

8. The PBRs also allow for the revocation of PTIs at the request of an entity. However, PTIs contain Best Available Technology requirements, which is federally enforceable. There is no authority in Ohio law for the Director to exempt an entity from a federally enforceable requirement, especially without a prior hearing. Consequently, it is doubtful the Director can revoke a PTI simply because the affected source would now be exempted from permitting requirements.

In addition to the general comments above, the OEC, without waiving its legal right to contest any rules proposed by or promulgated by Ohio EPA, incorporates each of the above general comments into each of the following specific comments to the proposed rule.

1. paragraph (A).

a. The parenthetical comment needs to be modified. The last part that begins with “the requirement of including . . .” should be deleted in its entirety and replaced with “any other applicable requirement.”

b. Paragraph (1) needs to be changed. The language that reads “or emissions units that the Maximum Achievable Control Technology” should be changed to read “or emissions units subject to the MACT.”

2. paragraph (A)(1)(qq).

a. Ohio EPA needs to explain how it developed the threshold levels contained in paragraph (iii) of this paragraph. How many air contaminant sources were analyzed? What level of emissions was analyzed? What impact will the rule have on increased emissions if the rule goes final? How many air contaminant sources will be exempted under the final rule? What modeling was performed? How many tons per year increases will there be under the final rule?

b. Ohio EPA needs to explain why they are gutting minor new source review through paragraph (iii). Ohio EPA represented during the new source review discussion group that changes at the federal level would not adversely impact “minor new source review” yet the changes in paragraph (iii) basically render “minor” new source review meaningless.

c. There appears to be a mistake in paragraph (iii)(b). The language refers to “PTE of less than the “Project Threshold” value listed in Column C.” However, the definition of “air contaminant source project” in rule 31-03 refers to “Column B.” Which column should paragraph (iii)(b) refer to, Column B or Column C?

d. The definition of “air contaminant source project” in 31-03 needs to be changed to read “31-03(A)(1)(qq)(x)” because it currently refers to (xi).

e. Paragraph (v)(a) should include additional language. The following should be added to the end of the sentence “and for five years upon cessation of operation.”

f. The language in (v)(c) should be changed to read “of any emission test conducted in accordance with Ohio EPA . . .”

g. A second sentence should be added to paragraph (vi). The following language should be added “Upon receipt of such notice from the owner or operator, the Director shall publish the notice and its receipt in the Weekly Review.” Also, Ohio EPA should explain in paragraph (vi) which form it is referring to. Finally, the form submitted to Ohio EPA should include a certification requirement, indicating that all of the information submitted is true and accurate under penalty of perjury.

h. For paragraph (vi)(g), the paragraph that states “the director may administratively assess a monetary. . .” should be deleted in its entirety. This issue should be addressed somewhere else.

i. With respect to the paragraph in (vi)(g) that ends with the sentence “Failure to submit the above information. . .” this sentence should be deleted in its entirety. Inclusion of this sentence renders the whole reporting requirement meaningless.

j. For paragraph (x), Column C renders the whole concept of “minor” new source review meaningless. In essence, inclusion of this Column C exempts “minor”

new source review from the permitting process and produces an absurd result, i.e., increases of emissions up to the threshold levels are now exempted from regulation. This column should be deleted from the rule.

3. paragraph (A)(4)

a. The language in paragraph (a)(i) should be changed to read “unless otherwise specified in each exemption, and shall be made available to the director. . .”

b. The exceedance reports in (ii)(b) should be submitted quarterly rather than annually. Ohio EPA routinely requires quarterly reports for this allows OEPA to determine trends, become aware of deviations sooner rather than later, and allows OEPA time to determine whether enforcement is appropriate. With a five year statute of limitations, annual reporting does not allow OEPA to properly exercise its enforcement discretion.

c. The information required in (ii)(b) is inadequate. The information that is required by paragraph (qq)(v) and (vi) should also be required in paragraph (ii)(b).

d. Somewhere in paragraph (a) should be a certification requirement, such that all records should contain a certification subject to perjury meaning that all of the information is true and accurate.

4. paragraph (A)(4)(g)

a. “Qualifications” should be deleted and the sentence that begins with “an auto body. . .” should be renumbered (i).

b. The word “jobs” in current paragraph (g)(i)(b) should be defined.

c. The word “enclosed” in current paragraph (g)(i)(d) should be clarified, does it refer to “permanent total enclosure,” a “partial” enclosure or a “total” enclosure?

d. The language in current paragraph (g)(i)(e) should read “the facility applies any paint or coatings only by”

e. A new paragraph (g) should be added to paragraph (g)(i) that reads “(g) the facility repaints or refinishes only used motor vehicles.”

f. What is the basis for the threshold limits contained in (g)(ii)(a)? What if the facility emits an air toxic?

g. Why are HAPs not required to be reported in paragraph (g)(iv)(a)? Both VOC and HAPs are applicable emissions limitation so they should both be reported.

h. Additional language should be added to paragraph (g)(iv)(b) so that the sentence ends with “including length of each job duration.”

i. Again, some type of certification requirement is needed for the reporting and record keeping requirements of paragraph (g)(iv), subject to perjury.

j. The compliance formulas in paragraph (vi)(a) and (b) need some explanation. A strict application of those formulas would not demonstrate noncompliance with applicable emission limits.

k. Additional language is needed in paragraph (vii). The language should read “nothing in this paragraph shall be construed to exempt any air contaminant source from the requirements of applicable law or of the federal clean air act . . .”

5. paragraph (A)(4)(h)

a. Again, “qualifications” should be deleted and the sentence that begins with “a gasoline dispensing facility . . .” should be renumbered (h)(i).

b. What is the basis for the throughput level specified in paragraph (h)(i)(d) and the OC emission limit contained in (ii)(a)? Again, what if some of the OCs are air toxics?

c. Paragraph (h)(iii) should be renumbered to be consistent with 31-03(A)(4)(i).

d. Current paragraph (h)(iii)(f) should read “the owner or operator of the facility shall finish repairing within days . . .”

e. The word “may” in paragraph (h)(iv)(a)(ii) should be replaced with “shall.”

f. Again, some type of certification requirement should be included in the reporting and record keeping section. A new paragraph (h)(iv)(c) should be added.

g. The language in paragraph (h)(v)(b)(iv) should be changed to read “the type, manufacturer and installation date . . .” and paragraph (v) should be deleted in order to be consistent with the language in (A)(4)(i)(v)(b).

h. If a leak cannot be repaired immediately then the existence of the continuing leak should immediately be reported to Ohio EPA so that it can take appropriate action. Certainly Ohio EPA does not want to have a leak continue for 15 days without being notified. Consequently, the language in paragraph (v)(c) should be changed to read “any leak from the vapor balance or vapor control system that is not repaired within 15 days shall immediately be reported to the Ohio EPA district office or local air agency, and shall also be reported within 30 days after the repair is completed.”

i. The language in paragraph (v)(d) should be changed to read “may be exempt from paragraphs * * * of this permit-by-rule only upon written determination by the director, in which case the owner operator shall comply with both of the following requirements:”

j. The language in paragraph (v)(d)(i) should be changed to read “during each month, monthly throughput, and shall retain these records for a period of five years.”

k. What happens if the entity exceeds its applicable limits? Is a PTI application required? Are exceedance reports required? Two additional paragraphs, (e) and (f), should be added, one requiring the submission of exceedance reports on a quarterly basis, and the second requiring the immediate submission of a PTI application in the event any exceedance occurs.

l. “Miscellaneous requirements” language similar to that contained in paragraph (A)(4)(g)(vii)(a) should be included as paragraph (A)(4)(h)(vii).

6. paragraph (A)(4)(i)

a. Again, “qualifications” should be deleted and the sentence that begins with “a gasoline dispensing facility . . .” should be renumbered as (A)(4)(i)(i).

b. What is the basis of the throughput limit contained in paragraph (4)(i)(e) and the OC emission limit contained in (ii)(a)? Again, what if the OCs constitute an air toxic?

c. The language contained in paragraph (iii)(a)(vi) should be changed to read “the owner or operator of the facility shall finish repairing within 15 days”

d. The “may” contained in paragraph (iv)(a)(ii) should be changed to “shall.”

e. Again, a certification requirement, subject to perjury, should be included, perhaps as a paragraph (iv)(d).

f. Again, Ohio EPA should be informed of all leaks that are not promptly repaired. Consequently, the language contained in paragraph (v)(d) should be changed to read “any leak from the vapor balance system or vapor control system that is not repaired within 15 days shall immediately be reported to the appropriate Ohio EPA district office or local air agency and shall also be reported within 30 days after the repair is completed.”

g. There appears to be a typographical error in paragraph (v)(e). The referenced paragraph should be (A)(4)(i)(vi).

h. Again, two additional paragraphs should be included in paragraph (v), one that requires the submissions of quarterly exceedance reports and the other that requires the submission of a PTI application in the event an exceedance occurs.

i. In paragraph (vi)(a), the sentence that begins with “at intervals not to exceed five years” should be changed to read “at intervals not to exceed five years, or upon the request of the director. . . .”

j. Also in paragraph (vi)(a), the sentence that begins with “not later than thirty days” should be changed to read “not later than thirty days prior to any required tests, the owner or operator of the facility shall submit an approved intent to test notification”

k. At the end of the paragraph that reads “not later than thirty days prior,” the post test inspection report should be kept at the facility for five years.

l. At the end of paragraph (vii), there should be inserted the standard language that refers to “miscellaneous requirements” similar to the language contained in paragraph (A)(4)(g)(vii).

7. paragraph (A)(4)(j)

a. Under the table contained in paragraph (j)(ii), there is no applicable emission limit that applies to visible emissions. Which rule applies, 31-05(A)(3), 17-07(A), or 31-03(A)(4)? The language as written in the draft rule provides no clarification and simply confuses the issue of which rule applies.

b. The language under the column “applicable emissions limitations/control requirements” that is next to the reference to 23-06(B), the language could be clearer. Instead of stating “units meeting the permit-by-rule qualification criteria,” the rule should specifically identify and reference the criteria. Also, rather than mentioning “to the rule” the language should be clear or should specify which rule.

c. The language under the column “applicable emissions limitations/control requirements” that is next to the reference to 31-05 refers to emissions limits for PM, NOX, CO, OC, and SO2. What is the basis for these limits? What if some of the OC emissions constitute an air toxic? In addition, this box also contains the language “the requirements of this rule also include compliance with” It would be clearer to say “sources operating under this rule are also required to comply with”

d. Under the column “applicable rules” what does “40 CFR part 60, subpart Dc” refer to? Is there a subpart Dc?

e. With respect to paragraph (j)(iv), all PTI revocations or requests for exemptions should be published in the Weekly Review. Again, some type of certification

requirement should be included in the reporting and record keeping section. A new paragraph (j)(iv)(c) should be added.

f. Paragraph (j)(v)(b) should be deleted in its entirety. The director has no authority to assume compliance by an entity.

g. Again, two additional paragraphs need to be included, one that requires the submission of exceedance reports on a quarterly basis and the other that requires the submission of a PTI application in the event an exceedance occurs.

8. paragraph (A)(4)(k)

a. Again, the word “qualifications” should be deleted and the sentence beginning with “a printing facility that meets. . .” should be renumbered (k)(i).

b. The sentence that reads “a printing facility that meets” should be changed to read “a printing facility that meets all of the following”

c. What is the basis for the threshold levels specified in paragraphs (k)(i)(b) and (c)? Again, the issue of air toxics needs to be addressed.

d. In paragraph (k)(i)(c), the language that reads “of this permit-by-rule, the owner or operator” should be changed to read “of this permit-by-rule, the facility” in order to be consistent with paragraph (A)(4)(l).

e. The language in paragraph (k)(i)(c)(i) through (ix) is confusing. For example, does paragraph (c)(i) apply to a heatset offset facility? Does (c)(ii) apply if the facility uses only digital printing?

f. For paragraph (k)(ii)(a), the language under the column identified as “Applicable Emissions Limitations . . .” that reads “Compliance with this rule also includes . . .” does not make sense. Does this language mean that if the facility complies with this PBR then it is also in compliance with rule 21-07(G)(2)? Does it mean that if a facility exceeds 40 pounds of VOC per day for 365 days, yet emits less than 10 tons per year, the facility is in compliance with the PBR? The sentence that reads “Compliance with this rule” should be deleted in its entirety.

g. The sentence under the column identified as “Applicable Emissions Limitations . . .” that begins with Exempt from the” needs to be clarified. In what way, or how, does the “qualifying criteria” “ensure” that the combined maximum usage of coatings and inks in all presses at a facility would be less than 148 tons per year?

h. The sentence under the column identified as “Applicable Emissions Limitations . . .” that begins with “Emissions of organic compounds” applies only to “non-flexographic” printing lines. Why?

i. Paragraph (k)(iii) appears to apply only when photochemically reactive materials (PRMs) are used in a non-flexographic press. Which paragraph would apply if PRMs are used in a flexographic press? Also, monthly reports should be required rather than merely annual reports. Finally, the language that reads “are employed in non-flexographic presses at the facility” should be changed to read “are employed in the facility operations” in order to be consistent with paragraph (k)(iii)(b).

j. With respect to the record keeping requirements of paragraph (k)(iii)(a), why are HAPs not required to be recorded?

k. Why is paragraph (k)(iii)(a)(v) not also included in paragraph (k)(iii)(c)?

l. Monthly, rather than annual, records should be required in paragraph (k)(iii)(b) as they are required in paragraph (A)(4)(l)(iii)(b).

m. Daily and monthly records should be required in paragraph (k)(iii)(c). Also, the term “graphic arts material” should be defined somewhere. If it is not defined then the term “material” should be used and the words “graphic arts” deleted.

n. For paragraphs (iii)(c)(vii) and (viii), the term “graphic arts material” should be defined somewhere. If it is not defined then the term “material” should be used and the words “graphic arts” deleted.

o. Again, some type of certification requirement should be included in the reporting and record keeping section. A new paragraph (k)(iii)(d) should be added.

p. With respect to paragraph (k)(iv)(a) and (b), “Reporting Requirements,” the paragraphs do not require any reporting. With respect to paragraph (iv)(a), all PTI revocations and all requests for exemption should be published in the Weekly Review.

q. For paragraph (iv)(b), what if the facility is not subject to paragraph (A)(4)(k)(i)(c)? Then what happens and what are the requirements? Also, what if the facility does not opt out of paragraph (iv)(b) and they violate (iv)(b)? Is the facility automatically subject to the “mid size” category of paragraph (A)(4)(l), in which case MORE emissions remain unpermitted?

r. Although paragraph (k)(iv)(c) requires a report if the pounds per day limit is exceeded, what happens if the pounds per hour limit is exceeded? A report should be submitted if the 8 pounds per hour limit is exceeded. Also, the language that reads “within 30 days after the exceedance occurs.” should be used in all “testing requirements” sections of all the PBRs and permanent exemptions.

s. Some operations are not required to keep daily records, e.g., a flexographic operation that uses PRMs. Thus, how are such operations supposed to demonstrate with their applicable daily limit as required by paragraph (v)(a)?

t. For paragraph (v)(b), what if the HAP content exceeds 7.5 pounds per gallon? There does not appear to be anywhere in this or any other PBR a limitation of 7.5 pounds per gallon of HAP. Therefore, this “compliance method” may not appear to be appropriate.

u. Paragraph (v)(c) allows a compliance demonstration through use of records required by paragraph (A)(4)(k)(iii). What if a facility is not subject to the requirements of (A)(4)(k)(iii)? How will compliance be demonstrated in that event?

9. paragraph (A)(4)(l)

a. Again, the word “qualifications” should be deleted and the sentence beginning with “a printing facility that meets. . .” should be renumbered (l)(i).

b. The sentence that reads “a printing facility that meets” should be changed to read “a printing facility that meets all of the following”

c. What is the basis for the threshold levels specified in paragraphs (l)(i)(b) and (c)? Were air toxics addressed when this limit was established?

d. The language in paragraph (l)(i)(c)(i) through (ix) is confusing. For example, does paragraph (c)(i) apply to a heatset offset facility? Does (c)(ii) apply if the facility uses only digital printing?

e. Why is paragraph (l)(i)(d) not included in paragraph (A)(4)(k)?

f. Paragraph (l)(i)(d)(i) does not make sense. If the clean up solution that contains 30% VOC is a HAP, then this paragraph authorizes a clean up solvent under (l)(i)(c) to emit a single HAP in an amount equal to 7.5 tpy, which exceeds the applicable emission limit.

g. For paragraph (l)(ii)(a), the language under the column identified as “Applicable Emissions Limitations . . .” that reads “Compliance with this rule also includes . . .” does not make sense. Does this language mean that if the facility complies with this PBR then it is also in compliance with rule 21-07(G)(2)? Does it mean that if a facility exceeds 40 pounds of VOC per day for 365 days, yet emits less than 10 tons per year, the facility is in compliance with the PBR? The sentence that reads “Compliance with this rule” should be deleted in its entirety.

h. The sentence under the column identified as “Applicable Emissions Limitations . . .” that begins with Exempt from the” needs to be clarified. In what way, or how, does the “qualifying criteria” “ensure” that the combined maximum usage of coatings and inks in all presses at a facility would be less than 148 tons per year?

i. The sentence under the column identified as “Applicable Emissions Limitations . . . “ that begins with “Emissions of organic compounds” applies only to “non-flexographic” printing lines. Why?

j. Paragraph (l)(iii) appears to apply only when photochemically reactive materials (PRMs) are used in a non-flexographic press. Which paragraph would apply if PRMs are used in a flexographic press? Also, monthly reports should be required rather than merely annual reports. Finally, the language that reads “are employed in non-flexographic presses at the facility” should be changed to read “are employed in the facility operations” in order to be consistent with paragraph (k)(iii)(b).

k. With respect to the record keeping requirements of paragraph (l)(iii)(a), why are HAPs not required to be recorded?

l. Why is paragraph (l)(iii)(a)(v) not also included in paragraph (l)(iii)(c)?

m. Daily and monthly records should be required in paragraph (l)(iii)(c). Also, the term “graphic arts material” should be defined somewhere. If it is not defined then the term “material” should be used and the words “graphic arts” deleted.

n. For paragraphs (iii)(c)(vii) and (viii), the term “graphic arts material” should be defined somewhere. If it is not defined then the term “material” should be used and the words “graphic arts” deleted.

o. Again, some type of certification requirement should be included in the reporting and record keeping section. A new paragraph (l)(iii)(d) should be added.

p. With respect to paragraph (l)(iv)(a) and (b), “Reporting Requirements,” the paragraphs do not require any reporting. With respect to paragraph (iv)(a), all PTI revocations and all requests for exemption should be published in the Weekly Review.

q. Although paragraph (l)(iv)(b) requires a report if the pounds per day limit is exceeded, what happens if the pounds per hour limit is exceeded? A report should be submitted if the 8 pounds per hour limit is exceeded. Also, the language that reads “within 30 days after the exceedance occurs.” should be used in all “testing requirements” sections of all the PBRs and permanent exemptions.

r. For paragraph (l)(iv)(c), the portion of the last sentence that reads “if required by Chapter 3745-31 of the Administrative Code” does not make any sense. Obviously, the facility that exceeds the exemption threshold would otherwise be required to obtain a PTI were it not for the existence of the exemption threshold. Thus, keeping the “if required by” language in this paragraph keeps the nuisance-causing facility or the exceedance-causing facility exempted from the requirements of Chapter 3745-31.

s. Some operations are not required to keep daily records, e.g., a flexographic operation that uses PRMs. Thus, how are such operations supposed to demonstrate with their applicable daily limit as required by paragraph (v)(a)?

t. For paragraph (v)(b), what if the HAP content exceeds 7.5 pounds per gallon? There does not appear to be anywhere in this or any other PBR a limitation of 7.5 pounds per gallon of HAP. Therefore, this “compliance method” may not appear to be appropriate.

u. Paragraph (v)(c) allows a compliance demonstration through use of records required by paragraph (A)(4)(l)(iii). What if a facility is not subject to the requirements of (A)(4)(l)(iii)? How will compliance be demonstrated in that event?

VIA EMAIL, FACSIMILE & U.S. MAIL

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October 13, 2004

Rec'd by DAPC, OEPA
2004 OCT 18 PM 1:03

Re: Proposed Amendment to OAC Rule 3745-31-03

Dear Mr. Carleski:

The following comments are submitted on behalf of D. David Altman Co, L.P.A. As a law firm that represents environmental law enforcement interests – from individual citizens, to neighborhood groups, to local units of government – we have grave concerns about both the legality and the wisdom of allowing significant sources of pollution to declare themselves deregulated under the proposed amendment.

I. Introduction

Without any analysis of how the proposed new regulation will affect the public, especially the middle class and environmental justice communities, a coalition of the regulator and the regulated is proposing to amend OAC 3745-31-03 to add a broad exemption from permitting for air pollution sources that claim they emit less than threshold amounts of specified pollutants.

The proposed amendment also adds six new categories of "permit-by-rule" (PBR) facilities—facilities that are exempt from site-specific permitting requirements. Ohio has not released information on how many facilities it believes will be exempted by the threshold exemption regulation, or how much additional pollution will be added to the air as a result of the exemption.

It has indicated that 20,000 facilities or more are in categories that may qualify for the new "permit-by-rule" provisions.¹

This amendment is a significant step backward for the protection of air quality in Ohio. It will affect the state's compliance with National Ambient Air Quality Standards (NAAQS), degrade the quality of the air in a manner prohibited by the anti-backsliding provision of the

¹See Rule Synopsis, OEPA, at <http://www.epa.state.oh.us/dapc/regs/3745-31/synopsis.pdf> (listing 2800 auto body shops, the "majority" of which may qualify for the PBR, 1150 gas dispensing facilities in Stage I counties, 2225 gas dispensing facilities in Stage II counties, 12,935 natural gas fired boilers, and 2800 printing facilities).

Clean Air Act (CAA), and impair the quality of the air breathed by citizens, especially those in the vicinity of newly-exempted emission sources.

II. THE PROPOSED AMENDMENTS BACKTRACK ON CAA-REQUIRED PROTECTIONS.

- *Ohio has not demonstrated, and presumably can not demonstrate, that the state will continue to meet the NAAQS if the proposed amendment is adopted.*

The currently approved State Implementation Plan (SIP) requires the use of “best available technology” (BAT) on all the sources that would qualify for the “Emission Threshold Exemption” under the proposed modification of 3745-31-03. However, section 3745-31-03 is part of the federally approved SIP. The Ohio EPA cannot modify the Ohio SIP, including section 3745-31-03, unless it can prove it will still meet the NAAQS for each pollutant at issue without regulating those sources. The Ohio EPA has made no such showing.

In a set back to historic progress, the modification allows facilities currently operating under a PTI to request that the PTI be revoked so they can operate under the exemption. The proposed regulation not only allows new sources to escape BAT, *but allows sources currently using BAT to stop using BAT.*

Further, to the extent the controls required by the permit-by-rule requirements are not as stringent as BAT; the same “BAT escape” loophole will apply to PBR facilities.

- *The proposed amendment violates the anti-backsliding provision of the CAA.*

Similarly, the anti-backsliding provision of the CAA prohibits the U.S. EPA from approving any change to a SIP (in effect prior to 1990 in areas which are non-attainment for the pollutant in question) unless that change ensures “equivalent or greater emission reductions of such air pollutant.” Thus, even if Ohio demonstrated that it could meet each NAAQS without requiring BAT on these sources, the Agency simply cannot demonstrate that **not** requiring BAT on thousands of sources achieves equivalent emissions reduction than requiring BAT. The proposed regulation does not reduce emissions.

To the extent the controls required by the permit-by-rule requirements are not as stringent as BAT; the same defect exists to PBR facilities.

- *The proposed amendment threatens people in communities where the newly unregulated sources are located, both through acknowledged emissions increases and through diminished oversight/enforceability that will lead to undetected emissions increases.*

The failure to control emissions from these so-called smaller sources (which are not necessarily “small” when one considers the cumulative impact from each exempt air contaminant “unit”) will overburden neighborhoods surrounded by or filled with newly exempted facilities.

First, the addition of an “Emissions Threshold Exemption” in the permanent exemption provision of section 3745-31-03 actually hinders the ability of the Director to enforce nuisance law. If the Director finds that a nuisance exists, he is limited to imposing a permit requirement instead of requiring the facility to take all action as necessary to abate the nuisance. Nor will the language of section 3745-15-07 be available to fill the gaps left in this modification. The language of section 3745-15-07 (the nuisance prohibition) provides “those sources of odors not subject to regulation under Chapter 3745-17, 3745-18 and 3745-31 of the administrative code shall not be subject to this rule”. Sources that qualify for a “permanent exemption” will likely be considered “not subject to regulations under chapter...3745-31”.

Second, without the application and permit there is no way for either the over-burdened Agency or the public to verify that the facilities claiming they met the emission exemptions actually do meet those exemptions. The Ohio EPA and local air agencies already regularly respond to citizen complaints by asserting that a facility appears to be in compliance with the law without investigating to verify that representation.

In fact, while each facility is supposed to maintain records on how it complies with the exemption, the only information that has to be turned over to the Director before the source is installed is the “uncontrolled potential to emit and ‘expected actual emission’ for each pollutant from each air contaminant source,...” Under the “emissions threshold exemption”, emissions thresholds include a “controlled potential to emit” – which is likely what the “expected actual emissions” rate will be based on. This “controlled potential” language opens the door for facilities to legally claim the theoretical potential of the pollution control equipment and not how that equipment is actually operated by the facility (e.g. argue a 99.7 % maximum control efficiency for dust collections, even the collectors are not installed or maintained according to specifications.)

Without testing, inspections or other government oversight, the “emissions thresholds” are illusory, at best. Also, because the “emissions thresholds” are applied on a pollutant-by-pollutant, unit-by-unit or project-by-project basis, the cumulative effect of all emissions on the local community from one facility, alone, is being ignored. It will be the local communities that will pay the price for the far from de minimis *cumulative* emissions that will be allowed to escape from these proposed deregulated sources. Communities that have not previously experienced a problem may now be plagued by odorous, noxious and most often hazardous air emissions when then facilities “down the street” *stop* using the BAT controls they had been employing for years.

III. The Proposed Amendments Allow Self-Deregulation.

As noted, under the proposed regulation, thousands of facilities would be authorized to pollute without applying for permits. Further, the regulation creates a broad emission threshold exemption, completely exempting facilities that emit less than specified amounts from regulation. In addition, it creates six new categories of permits-by-rule, where facilities can operate without applying for a permit. Of these six categories, only natural gas fired boilers and gas dispensing facilities with stage II controls will be required to even submit notification of their intent to operate under the PBR to Ohio EPA. The regulation represents an abandonment of governmental responsibility for oversight of thousands of air pollution sources affecting Ohio's neighborhoods. It will reduce enforcement, oversight and accountability of sources of pollution breathed by countless Ohio residents. It will also strip Ohio's citizens of their right-to-know what they are breathing, especially the cumulative impact of nearby "small" air sources.

Despite this potential *health and comfort impact* on the public, OEPA offers a potential 20% reduction in its *permitting workload* as a central justification for the regulation change. The answer to Ohio EPA's backlog of permits is adequate law enforcement resources, not arbitrarily removing thousands of company from regulation and public and regulatory scrutiny.

The regulation applies to "minor sources" -- sources that are considered "minor" under federal law because they are limited in their contribution to ambient air pollution and *national* air quality standards. As the Agency knows, these same sources are not necessarily "minor" in the communities and neighborhoods where they operate. Such minor sources are currently required to obtain both permits to install (PTIs) and permits to operate (PTOs). Under the current regulations, the agency is entitled to review detailed information submitted in the sources' permit applications (which are available for public review). Permit applicants are required to meet BAT requirements and to demonstrate compliance with the terms of their permits to install in order to receive permits to operate. Ohio EPA is authorized to deny permits based on air quality, or other adverse environmental, social or economic impacts. Short of permit denial, the Ohio EPA can impose terms and conditions in PTIs to provide for protection of human health and the environment. In addition, the public (and local governments) have the right to review permit applications, and receive notice of and comment on proposed permits.

Because exempted facilities will no longer need a PTI, no one will be responsible for determining whether the facility is located on a site where the quantity of routine or periodic emissions, that might be major in terms of overall impact on the state's air, might be damaging in terms of exposure to near-by, sensitive populations. Local governments could no longer ask the state to condition or deny permits where facilities have the potential to harm human health, or have other adverse environmental, social or economic impacts. Nor will the agency be authorized to condition or deny permits in such a case.

Ohio's PTI program has been in operation since the 1970's. It is a central tool in the agency's efforts to achieve and maintain compliance with the Ohio air quality standards, and to protect citizens from neighborhood sources of pollution.

The proposed regulation will eliminate the requirement to obtain a site-specific PTI for thousands of facilities across the state. This means that the agency will have less information, oversight, and authority over those sources, and that citizens will have even less information, and no right to participate. Below is an analysis of key rollback provisions:

- **Sources will be exempt from BAT even when they emit compounds that persist, are toxic and bioaccumulate, like mercury and PCBs.**

The regulation has a short list of compounds for which releases are limited to less than a ton for all facilities applying for the exemption. However, this list allows companies to escape any control requirements even though they emit bioaccumulative, persistent toxic compounds. For mercury, for example, a facility is exempt if it emits up to 260 pounds per year. This is over 10% of the amount reported by all TRI reporting facilities total for mercury (over 2% if all mercury compounds are included) for Ohio for 2002, allowed for a single facility without any control technology requirements or permit requirements. It is not clear from any of the public information released by Ohio with the regulation whether the state has any estimate of the amount of these bioaccumulative, persistent pollutants that will be authorized by the new regulation. Sources would be exempt even if they emitted up to 87 pounds of polychlorinated biphenyls (PCBs). For 2002, there are no air releases of PCBs reported for the state, and only 45 pounds of land releases, and 30 pounds of PCBs treated on site.

- **The new regulation will eliminate the ability to deny or condition permits for self-declared exempted facilities.**

Under current law, the Director can deny or condition permits based on social or economic impacts of the air contaminants, water pollutants or other adverse environmental impact that may result from approval of the source. 3745-31-05 (B). Under the proposed regulations, such impacts could not be considered. In addition, the Director has historically had the right to 'impose such special terms and conditions as are appropriate to ensure adequate protection of environmental quality.' 3745-31-05 (C). Under the proposed regulation, the Director would have no ability to impose such conditions on the exempt and PBR sources.

- **The new regulation will eliminate public participation.**

Current law requires that all members of the public (and local government entities) receive notice and an opportunity to comment on proposed PTI's. OAC 3745-31-09. Exempt and PBR facilities need only submit a notification to the Director. There is no permit application, no permitting decision, and no notice and comment for the public.

- **The new regulation will reduce the information available to regulatory agencies.**

Under current regulations, sources are required to file permit to install applications. Those applications contain information about the facility that is important to regulators, neighborhoods and nearby residents. They contain a listing of all pollutants emitted by the facility (in amounts greater than de minimus), and a list of all control technology devices. For each such device, the source is required to list the pollutant controlled, the design control efficiency and the operating capture and control efficiencies (the percentage of exhaust gases captured by the system, and the percentage of pollutants removed by the system, respectively). Under the proposed regulation, exempt sources would be required to submit (in addition to standard name, address, owner/operator, location) only a description of the equipment, and uncontrolled PTE and expected actual emissions for each pollutant, per year.

- **Even sources that are now exempt will be required to provide *less information* under the new exemption and sources currently in violation for operating without a permit could 'opt-in' to the new exemption.**

Current law allows a de minimus exemption that would apply to some of the same facilities. OAC 3745-15-05. However, those facilities are required to maintain more rigorous documentation, particularly with regard to operation of the control devices than appears to be required under the proposed regulations. Compare OAC 3745-15-05(E)(5) with provisions of proposed OAC 3745-31-03(A)(1)(qq)(v). The new regulation would also allow facilities that are now in violation for operating without a permit to 'opt-in' to the exemption without submitting documentation required for permitting. Proposed OAC 3745-31-03(qq)(ix).

- **No compliance demonstration would be submitted.**

Under current law, sources must first obtain PTIs and then apply for PTOs after construction. A demonstration of compliance, as well as description of monitoring, must be submitted to the Agency. Under the proposed regulation, thousands of facilities would be permitted to simply maintain on site whatever records they keep. Public review would be unavailable. The proposed regulation requires, for the most part, that required records demonstrating that emissions are within legal limits, be kept only on-site at the facility, thus exempting these facilities from any public scrutiny, and leaving it to an already understaffed agency to find, inspect, and vet those records to root out potential violators. In addition the required record keeping is less stringent than may be required under permit or under the existing de minimus exemption.

- **Up to 12,000 natural gas-fired boilers will no longer be required to obtain PTIs under the new regulation.**

According to the OEPA synopsis, there are an estimated 12,935 natural gas fired boilers in Ohio. It is unknown how many of those would be below the 100 million BTU per hour firing rate that would allow them to qualify for the PBR. This potentially amounts to hundreds of thousands of tons per year of NOx emitted into Ohio's air, for example, that would be exempt from PTI requirements under the regulations.

- **The proposed rule eliminates any state BAT requirements for tanks of organic liquids.**

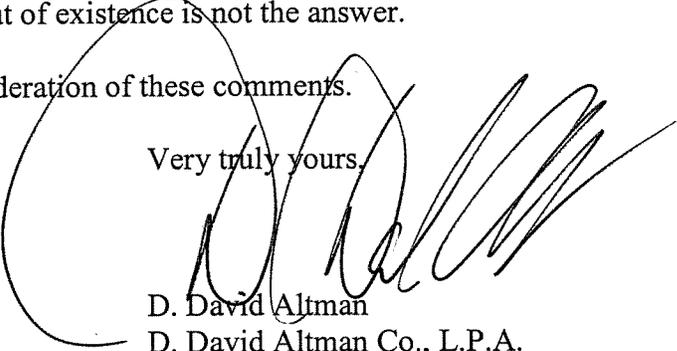
OEPA admits that it is eliminating any state permitting requirements on storage tanks smaller than those required to meet federal new source performance standards. It has not released an estimate of how many tanks might qualify or how much additional pollution could result. The regulation increases size of storage tanks for organic liquids that are exempt from PTI requirements: from less than 700 gallons to 19,815 gallons for all organics; from 10,000 gallons to 39,894 gallons for organics with a vapor pressure under specified maximum.²

IV. Conclusion

The proposed modification to section 3745-31-03 is illegal because it would weaken the federally approved SIP. In fact, the proponents of the regulation ignore the impact of the increase in emissions that will result from its adoption. The "emissions threshold exemption" and the additional PBR categories are not the way to address the Agency's budget shortfall. Protection of the health and welfare of the public requires finding a way to address the Ohio EPA's permitting backlog. Defining the problem out of existence is not the answer.

Thank you for your consideration of these comments.

Very truly yours,



D. David Altman
D. David Altman Co., L.P.A.

cc: Hon. Jim Petro, Ohio Attorney General
Christopher Jones, Director of the OEPA

² From 1.5 psi at 70 degrees in the current regulation to 2.176 psi absolute in the proposed regulation.

Rec'd by DAPC, OEPA

2004 OCT 18 PM 12: 38



Maumee Bay Association

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October 13, 2004

Ohio E.P.A.
D.E.P.A.
Attn. Rick Carleski
122 S. Front St.
Columbus, Ohio 43215

COMMENTS OF THE MAUMEE BAY ASSOCIATION IN RESPONSE TO O.A.C. 3745-31-03 ISSUED TO INTERESTED PARTIES

The Maumee Bay Association seeks to assist with issues impacting the Western Basin of Lake Erie. The proposed deregulation for air permits, rules and regulations would allow high levels of mercury, other toxics and ozone pollutants that adversely impact the waters of the Western Basin of Lake Erie.

Ohio E.P.A. Director Chris Jones took precedent setting action in limiting the amount of mercury at 36 pound annually for a proposed Coke Plant in the Western Basin of Lake Erie. Ohio E.P.A. Director Chris Jones rightfully took great pride in issuing this permit as a standard for other states to follow. The mercury limits in this proposed rule would allow up to 260 pounds annually – far more than the 36 pound annual limit set for the coke plant. The careful watch on mercury emissions is required because of fish consumption advisories in many of Ohio's watersheds. It is important that these rules change to eliminate mercury emissions whenever possible and, when there are mercury emissions, to require the absolute lowest mercury quantity possible. These changes would be consistent with the Great Lakes Air Agreement and September 2004 I.J.C. recommendations.

In addition, the Toledo area ranks 7th in the nation for asthma and allergies. Ozone emitters are widely regarded as the cause for these health problems. Coupled with the adverse health effects from ozone pollution is acid rain. Other states are holding Ohio accountable for acid rain. These proposed rules appear to reduce accountability for ozone emissions and would then increase acid rain to Lake Erie and areas outside Ohio.

Lake Erie, according to recent I.J.C. and other reports, is showing signs of reverting back to the problems of the 80's. This is a serious concern for all. The impacts of air emissions on Lake Erie should be studied before there is any air permitting deregulation. We have the world's largest source of fresh water and we should treasure and protect it.

The following are more specific comments on the proposed Ohio E.P.A. Air Permitting Rules, 3745-31/3745-31-03.

1. One of the reasons the rules are proposed for change is to reduce the permit processing time for small businesses. A very complex 2004 air permit for U.S. Coking, that proposed 8 million pounds of pollutants annually, underwent review, public notice, and issuance in less than six months. Ohio E.P.A. has the authority to expedite permits for small businesses in the existing rules.
2. There is a Permit Processing Committee that reviewed these proposed revisions to the air permitting process. How was this committee formed? Who are the public and environmental representatives? How is Lake Erie represented? How is the public informed of these meetings and the process? The Clean Air Act requires public involvement in this process. How has Ohio complied with the Clean Air public involvement requirements in these rule making changes?
3. The existing HAP and VOC rules have limitations of 4.5 pounds per hour and 5.85 tons per year. The proposed rules would have no reporting requirements for individual quantified HAP and VOC limitations and would virtually eliminate reporting of quantities. The proposed rules would not require a Permit to Install. The proposed rules require reporting HAPS(which mercury is one of) and VOC's in summation instead of by individual pollutants. This is found in Paragraph A(3) of rule 3745-31-05 and Paragraph U(1) of rule 3745-21-09 of the Ohio Administrative Code.

These proposed rule changes are in violation of the Great Lakes Air Agreement which states in Part II Permitting Information:

"A. All permit applicants in the state will be required to identify and quantify potential emissions of the Pollutants identified in Table A as part of a routine source review application. Table A consist of the seven pollutants identified by the IJC as having adverse impacts on the Great Lakes and which have the potential of being emitted by air pollutant sources. Other pollutants maybe added to Table A by unanimous agreement of the environmental administrators of the Great Lakes.

B. Each state permitting authority shall conduct its own technical review in order to assure accurate identification and quantification of these pollutants.

C. Environmental Impact Statements, for potential sources of pollutants in Table A which are required under current state and federal regulations, should consider potential adverse impacts on the Great Lakes in order to be considered complete.” The pollutants listed in Table A are:

- Mercury
- Alkylated Lead Compounds
- Total Polychlorinated Biphenyl
- Hexachlorobenzene
- Benzo-a-pyrene
- 2,3,7,8-Tetrachlorodibenzo-p-dioxin
- 2,3,7,8-Tetrachlorodibenzofuran

The agreement requires that these pollutants are regulated through a permit which require pollutant identification and quantity limits. Changes in the proposed rules are required to comply with these provisions.

4. The Interagency section of the Great Lakes Air Agreement requires that:

“A. Subject to restrictions on disclosure of trade secrets under federal and state law, each state shall Enter into the BACT/LAER Clearinghouse and the Air Toxic Information Clearinghouse all permitting information relating to sources of the pollutants identified in Table A. This information shall include, as a minimum, the following information: All BACT and/or LAER determination, all useful air toxics permitting information; **and all air toxic emission verification data.**

B. Additionally, each state shall send to all of the other Great Lakes air permitting programs a copy of public notice and a summary of the permitting information for any source which has the potential to emit any of the pollutants in Table A and which is which is subject to the federal public comment period requirements.

C. Each state shall participate in a standing technical steering committee to maintain consistency to the extent practicable in state determination made pursuant to this agreement.”

Please explain how these agreement requirements can be met with the proposed rules.

5. The proposed rules reference a quantity limitation for mercury of up to 260 pounds. Mercury and other hazardous air pollutants are pollutants that are sought to be controlled in the Great Lakes Water Quality Agreement, Binational Toxics Strategy, Great Lakes Air Agreement, Lake Erie Lakewide Management Plan, U.S. Fish and Wildlife “Fish Community Objectives” for Lake Erie and the I.J.C.

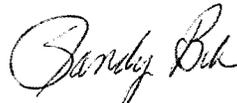
The September 2004 IJC report, Chemical Integrity Recommendations, states “The Commission recommends the two federal governments in conjunction with the states and provinces and institutions: (Paragraph 3) Select and promptly implement programs in both the United States and Canada that would substantially reduce the deposition of mercury in its reactive gaseous form in the Great Lakes region; and also pursue multilateral strategies for further control of this persistent toxic substance on a global basis.”

Furthermore a limitation of 260 pounds annually exceeds the emissions for mercury that a power plant is reporting. The First Energy Bayshore Power Plant reports 239 pounds per year. Power plants are considered a major source of mercury and there are rules to control them. These new rules would allow more mercury than a power plant? The new rule certainly exceeds the quantity allowed by Ohio E.P.A. in a 2004 U.S. Coking Air permit which has an annual limitation of 36 pounds. How can these new rules have a higher limit for mercury than a major air pollutant source like a coke plant or power plant?

6. How has the impact of these rules on human health and the environment been evaluated if these changed air regulation rules are adopted?
7. How has the impact on Lake Erie and the water been evaluated if these changed air regulations are adopted?
8. How has the impact of ozone emitting pollutants been evaluated for Lake Erie if these changed air rules are adopted?

Please consider these comments in your deliberations on these proposed rules. I want to reiterate the importance of the impacts of mercury and ozone on Lake Erie, a source of drinking water for many Ohioans.

Sincerely,



Sandy Bihn
President

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Rec'd by DAPC, OEPA

2004 OCT 18 PM 1:02

October 13, 2004

Dear Mr. Carleski,

ECO: Environmental Community Organization, Sierra Club, and Rivers Unlimited are jointly submitting comments on the proposed changes to OAC 3745-31-03. ECO is a grassroots organization located in Cincinnati that addresses issues of industrial pollution in southwest Ohio.

Sierra Club is a national organization committed to environmental protection and environmental justice with 700,000 members nationally and 20,493 members enrolled in its Ohio chapter.

Rivers Unlimited is the nation's oldest non-profit organization dedicated to river protection and restoration.

Our comments and concerns include, but are not limited to, those listed in this document. These comments represent an effort to understand and comment on complex rules under severe time constraints, and in the absence of any supporting information from Ohio EPA. We are attaching a comment letter prepared by Bruce Buckheit for ECO; the signatories incorporate the comments prepared by Mr. Buckheit into their comments. Additionally, the signatories to this letter wish to incorporate by reference the comments submitted separately by D. David Altman.

We are additionally attaching the City of Cincinnati's resolution opposing the proposed rules, as a supporting document.

In his comments Mr. Buckheit provides some alternatives for streamlining the permitting process. We do not endorse their immediate use, but rather support further investigation into these tried and tested alternatives.

Sincerely,

Karen Arnett, Program Director, Environmental Community Organization, 515 Wyoming Ave,
Cincinnati, OH 45215

Marti Sinclair, Toxics Issue Chair, Ohio Chapter of the Sierra Club, 11986 Elmgrove Cir. Cincinnati,
OH 45240-1537

Mike Fremont, President Emeritus, Rivers Unlimited, 515 Wyoming Ave, Cincinnati, OH 45215

Marie Kocoshis, Concerned Citizen, 7813 Hopper Rd. Cincinnati, OH 45255-4268

Attachments:

Letter from Bruce Buckheit
City of Cincinnati Resolution 84-2004

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I. Summary

The Clean Air Act states, “that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments.”¹ We find the proposed law to be contrary to the intent of the Clean Air Act, essentially representing an abandonment of the Ohio EPA’s responsibility to preserve air quality and protect the public health. We ask that the Ohio EPA withdraw the proposed rules.

Despite claims that these proposed rules will reduce Ohio EPA’s workload, the head of Permits and Enforcement for Hamilton County Dept of Environmental Services has stated in unofficial conversation that the rule’s complexity will cause companies to need more help determining its applicability; he anticipates the workload for the agency may increase as a result.

The Ohio EPA asserts that the regulation applies to “minor sources,” and has misled the public by equating “minor,” a designation with specific meaning under federal air rules, as equivalent to small and insignificant. One Ohio EPA representative even told a group of concerned citizens gathered at a recent public information session that the sources receiving exemption were “tiny.” Far from this, the exemption threshold rule would apply to all sources not deemed “major” emitters by federal rules. To eliminate regulation of these sources, of which there are many thousands, would be an unacceptable abandonment of Ohio EPA’s charge to protect human health and the environment. This is even more troublesome given that the state of Ohio’s air ranks as among the most polluted in the nation, and that the city of Cincinnati is ranked high among cities nationwide for having some of the highest levels of air pollution.

II. Recap of primary concerns and questions regarding the proposed rules.

Public notice and participation

1. We contend that the process of drafting the proposed rules is inherently flawed. The process consisted of a consensus with industry and trade groups only; in the Ohio EPA’s own statement “If at anytime...any participant organization believes that one or more of the recommendations cannot be implemented, the issue and the reasons for this belief will be discussed by the Committee with all efforts to achieve resolution.”² No similar participation was allowed by the public, or by Ohio decision makers. Any concerns raised by the public in the course of the drafting of this or other PPEC guided rule changes have not been accorded the same weight of consideration.

2. Members of concerned public advocacy groups have repeatedly asked Ohio EPA to provide analyses regarding: the expected numbers of facilities to be affected by the rule

¹ Clean Air Act, Title I, Part A, Sec. 101(a) (3)

² Ohio EPA/Industry Permit Processing Efficiency Committee, Final Report, January 22, 2002.

changes, the expected cumulative impact on air quality, the expected emissions from exempt facilities, etc. To all of these requests, Ohio EPA has flatly stated that it has no such analyses. To date, no impact analysis of any kind has been made available to the public.

3. Further, the public will be excluded from participation in the consideration for exemption, and in the oversight of exempt facilities. Current law requires that all members of the public (and local government entities) receive notice and an opportunity to comment on proposed PTI's. OAC 3745-31-09. Exempt and permit by rule facilities need only submit a notification to the director. There is no permit application, no permitting decision, and no notice and comment for the public. Since exempted sources' emissions will without doubt have an impact on local air quality, the public must have the opportunity to comment and must have access to operating records from the facilities in question. Additionally, the public must have access to records regarding the operations and compliance status of polluting facilities.

We believe that the Clean Air Act requires public participation in Minor New Source Review programs, and that the proposed rules are in conflict with this requirement.

3. The City of Cincinnati will be hindered from investigating violations of its new air ordinance, because of lack of public records for exempt facilities. The city was given no notice of the proposed rule changes or opportunity as an interested party to influence the process of drafting these rules. Neither did Ohio EPA seek the input of municipalities in the drafting of these rules.³

Complexity and lack of standardization

1. Key members of the local air agency, Hamilton Co. Dept of Environmental Services, have stated that the emissions threshold exemption rule is so complex that they have concerns about 1) abuse of the rule by companies erroneously claiming exemptions and that 2) their workload will be increased by the need to explain the rule's application to companies. Ohio EPA itself has stated that it wants the new rules to be "self-implementing"⁴, meaning that companies should not have to consult with OEPA to determine eligibility for exemption. Given the high potential for misunderstanding this complicated rule, the worst case would be that sources not actually eligible for exemption would claim such, creating a backlog of violations to this new rule, or at best, would increase the workload for local air agencies, whose incentive to monitor facilities seeking exemption would be lowered by the elimination of revenue through permit fees.

2. Ohio EPA representatives stated at an October 4, 2004 public information session that they would leave the matters of reviewing "applications" for exemption, and subsequent efforts to check on compliance with applicable regulations, to the local air agencies. The emissions threshold exemption rule allows Ohio EPA to effectively wash its hands of these responsibilities. As each air agency is allowed to make its own rules regarding

³ See attached resolution 84-2004.

⁴ Permit Exemption Threshold Committee, minutes of December 11, 2003 meeting, pg. 3.

ongoing enforcement for exempt facilities, the possibility arises of no standardization statewide for the emission threshold rule.

Nuisance issues

1. Under current law, the emission into the air of any substances that harm human health in such manner or in such amounts as to endanger the health, safety or welfare of the public is unlawful, and the Ohio EPA has the authority to go to court to stop such emissions. OAC 3745-15-07. However that provision (called the air nuisance provision) exempts sources that are exempt under OAC 3745-31. Therefore, sources that would be exempt under the new regulation would also be exempted from the prohibition on harming public health, safety and welfare.

2. Ohio EPA representatives have made it clear in public workshops that it only takes enforcement action for nuisance against companies that have other permit violations in addition to nuisance violations, and only then against companies that have a chronic record of violations. The proposed rule impose a precondition (no permit violations possible) that, even if it were possible to enforce the nuisance provision, excludes exempt sources from Ohio EPA's criteria for nuisance enforcement.

3. Auto body repair shops and printing shops have a high likelihood of causing nuisance, for several reasons. These facilities work primarily with solvents, the businesses are small and often located in or adjacent to residential areas, and because they are small, they often have inadequate or no pollution controls to capture VOC fumes. The air complaint record in southwest Ohio indicates that in particular auto body repair shops are a common source of air quality problems, even for facilities that are operating at current de minimis standards, meaning at levels far below those that the new rule would allow. Because these two types of facilities are likely to violate the nuisance provision, just by the nature of their operations and their ability to be sited in near residential areas, we feel it is inappropriate to include these two categories of facility in permit by rule.

Enforceability

1. Ohio EPA asserts that the proposed exemptions will not render a source exempt from complying with all applicable rules. This is problematic in several ways:

- How will a company be held to complying with rules when it has never been advised of its specific legal obligations?
- How will the local air agencies know when a facility may potentially be in violation? The southwest Ohio air agency states concerns that it will not even be aware of the operation of exempt facilities, since no approval from the Director is required for exemption, and since retroactive revocation is also possible with no approval. Several of the newly proposed categories of permit by rule do not even require notification of the Director.
- What incentive will there be for the local air agency to enforce compliance with rules when it is not receiving permit fees from the exempt source and when enforcement appears, according to the proposed language, to be optional?

2. The proposed rule does not require a formal application for exemption, but instead simply a notification to the Director. Neither does a source require approval of the Director for exemption. This seems to render the concept of compliance with the applicable laws a purely optional matter.
3. The proposed rule requires no certification by a responsible official from the company seeking exemption. Yet again, there seems to be no legally binding process for obtaining exemption.
4. Under current law, sources must first obtain PTIs and then apply for PTO after construction. A demonstration of compliance, as well as description of monitoring must be submitted to the agency. Under the proposed regulation, thousands of facilities would be permitted to simply maintain on site whatever records they keep. Public review would be unavailable. The proposed regulation requires, for the most part, that required records demonstrating that emissions are within legal limits, be kept only on-site at the facility, thus exempting these facilities from any public scrutiny, and leaving it to an already understaffed agency to find, inspect, and vet those records to root out potential violators. In addition the required record keeping is less stringent than may be required under permit or under the existing de minimis exemption.

Emissions factors inaccurate; need for monitoring to verify actual emissions

We believe that the Ohio EPA should not eliminate the possibility of emissions testing and monitoring as a tool for gauging compliance.

The currently proposed rules eliminate the possibility of monitoring and emissions tests to verify claims of eligibility for exemption and to verify ongoing compliance. We believe that the option of monitoring and testing for compliance should be held as an option for the agency to verify compliance. One example indicating the importance of this is with Willard Industries, an aluminum foundry located in Cincinnati. This facility claimed de minimis for HAPs, and operated as such for almost a decade. Yet after receiving citizen complaints as to the basis for the de minimis status, the local air agency required the company to provide emissions information. A subsequent stack test revealed that the company's emissions put it in the category of a major source of HAPs. The proposed rule could allow such a facility to falsely assert its emissions levels, and once obtaining a permanent exemption, there would be very little, if any, likelihood that the error would be found.

The assertions of eligibility for exemption, and the in-house record keeping that is required of exempt facilities, will most likely be based upon emissions factors. The USEPA Inspector General issued a report in March 2004, indicating a high level of inaccuracy in emissions factors.⁵ This echoed a United States GAO report from April

⁵ United States Environmental Protection Agency, Office of Inspector General, "EPA's Method for Calculating Air Toxics Emissions for Reporting Results Needs Improvement" (Report No. 2004-P-00012, March 31, 2004).

2001.⁶ These reports indicate the need for more monitoring to determine actual emissions.

For many facilities the proposed rules will eliminate the requirement to apply Best Available Technology.

Existing law requires that new sources obtaining PTIs must apply Best Available Technology to control pollution from the facility. OAC 3745-31-05 (A)(3). Exempt sources would not be subject to this requirement under the new threshold emission exemption. Concerns on this issue of BAT are addressed in the attached letter prepared by Bruce Buckheit.

Sources will be exempt from BAT even when they emit compounds that are persistent, toxic and bioaccumulative, like mercury and PCBs.

This concern is addressed in the comments of D. David Altman.

Reduces the information available to regulatory agencies.

Under current regulations, sources are required to file permit to install applications. Those applications contain information about the facility that is important to regulators, neighborhoods and nearby residents. They contain a listing of all pollutants emitted by the facility (in amounts greater than de minimis), and a list of all control technology devices. For each such device, the source is required to list the pollutant controlled, the design control efficiency and the operating capture and control efficiencies (the percentage of exhaust gases captured by the system, and the percentage of pollutants removed by the system, respectively). Under the proposed regulation, exempt sources would be required to submit (in addition to standard name, address, owner/operator, location) only a description of the equipment, and uncontrolled PTE and expected actual emissions for each pollutant, per year.

Even sources that are now exempt will be required to provide *less information* under the new exemption and sources currently in violation for operating without a permit could 'opt-in' to the new exemption.

Current law allows a de minimis exemption that would apply to some of the same facilities. OAC 3745-15-05. However, those facilities are required to maintain more rigorous documentation, particularly with regard to operation of the control devices than appears to be required under the proposed regulations. Compare OAC 3745-15-05(E)(5) with provisions of proposed OAC 3745-31-03(A)(1)(qq)(v). The new regulation would also allow facilities that are now in violation for operating without a permit to 'opt-in' to the exemption without submitting documentation required for permitting. Proposed OAC 3745-31-03(qq)(ix).

⁶ United States General Accounting Office, "Air Pollution: EPA Should Improve Oversight of Emissions Reporting by Large Facilities (GAO-01-46, April 2001).

Contradicts OEPA's stated intent to apply only to "small" businesses

1. The proposed rules as written contradict the stated intent of Ohio EPA to exempt only "insignificant" facilities. Many sources that are not IEUs (Insignificant Emissions Units) will be eligible for exemption under the rule as currently written.

According to a letter issued by USEPA Region 5 to Ohio EPA on May 3, 2001, "insignificant" is determined by a source's uncontrolled PTE. The letter states that "considering controls when determining whether or not an emission unit is insignificant violates the intent of the Clean Air Act and Part 70."⁷

The proposed emissions threshold rule defines the exemption threshold for criteria pollutants by reference to **actual** emissions - which reflects operation with controls and operational limitations - and for HAPs by **controlled PTE**, which is clearly in contradiction to USEPA's guidance for determining insignificance.

2. Ohio EPA has repeatedly stated that the proposed rules only apply to small and insignificant sources. Yet the rule contains no language that would limit the number of individual source exemptions that could be obtained for a large facility, such as an oil refinery or chemical plant. The number of individual PTIs for two local facilities- Procter & Gamble has 75, Bayer/Lanxess has 48 - only hints at the potential for multiple exemptions at a single facility.

- Under the rule, major sources under the New Source Review rules are not barred from obtaining multiple exemptions for sources within the facility.
- The "project" definition allows for thresholds that for many criteria pollutants equal the threshold for a major modification for a PSD permit. A facility that is by nature a single source operation might construe its source as a "project", allowing for a single source threshold at the "project" level (column C of threshold exemption table), potentially allowing up to 40 tons per year PTE for VOCs.

Lacks cumulative impact assessment

Ohio EPA and the PPEC "estimated that, if we are successful on all efforts, we will reduce permitting by as much as 40%..."⁸ ECO's estimates, based upon information from both Ohio EPA and Hamilton County Department of Environmental Services (HCDOES), indicates that the reduction of permits could range from 40% to 55%⁹. Ohio EPA states that it deals with 80,000 permits to install statewide. Since it appears that the rule will allow for exemption of as many as 40,000 permits to install, a full impact

⁷ Letter from Pamela Blakley, Chief, Permits and Grants Section, USEPA Region 5 to Thomas Rigo, Ohio EPA, May 3, 2001. The correspondence refers to insignificant determinations for Title V, but the concept can equally be applied to general determinations of insignificant emissions.

⁸ Industry-Ohio EPA Permit Process Efficiency Committee Progress Report - November, 2002, pg 3.

⁹ According to Ohio EPA, roughly 25% of permits will fall in the permit by rule exemption, and HCDOES gives an official estimate that the emissions threshold exemption will reduce 15-30% of permits to install locally; we have assumed this figure is roughly accurate for statewide use as well.

assessment of the rules' impact on local and ambient air quality, health, the ability to comply with NAAQS, at a minimum, is needed to justify this large scale of deregulation.

Violates EPA's own Environmental Justice policy

The rule undercuts the state of Ohio's obligation to develop EJ policy in accordance with USEPA's *Region 5 Environmental Justice Action Plan For Fiscal Years 2003 And 2004* 1) by eliminating the authority of the Director of Ohio EPA to consider adverse social, economic, or environmental impact of new sources (OAC 3745-31-05), which would include disproportionate impact on EJ communities, and 2) by eliminating public participation on exempt facilities.

Under current law, the director can deny or condition permits based on social or economic impacts of the air contaminants, water pollutants or other adverse environmental impact that may result from approval of the source. 3745-31-05 (B). Under the proposed rules, such impacts could not be considered. In addition, the director now has the right to 'impose such special terms and conditions as are appropriate to ensure adequate protection of environmental quality.' 3745-31-05 (C). Under the new rules, the director would have no ability to impose such conditions on the exempt and PBR sources.

Emissions inventory

We question how the cumulative emissions from exempted facilities will affect the accuracy of the statewide emissions inventory. Ohio EPA has simply glossed over this question by answering that the exempt sources are so insignificant as to obviate any need for an impact analysis. Nevertheless, we feel that such an analysis is necessary, in order to show the impact on the ability to comply with the NAAQS.

According to the OEPA synopsis, there are an estimated 12,935 natural gas fired boilers in Ohio. It is unknown how many of those would be below the 100 million BTU per hour firing rate that would allow them to qualify for the PBR. This potentially amounts to hundreds of thousands of tons per year of NOx emitted into Ohio's air, for example, that would be exempt from PTI requirements under the regulations.

The proposed rule eliminates any state BAT requirements for tanks of organic liquids.

OEPA admits that it is eliminating any state permitting requirements on storage tanks smaller than those required to meet federal new source performance standards. It has not released an estimate of how many tanks might qualify or how much additional pollution could result. The regulation increases size of storage tanks for organic liquids that are exempt from PTI requirements: from less than 700 gallons to 19,815 gallons for all organics; from 10,000 gallons to 39,894 gallons for organics with a vapor pressure under specified maximum.

ECO requests an explanation of the basis for this proposed change.

For all of the above reasons ECO opposes the proposed changes to OAC 3745-31-03, and urges the agency to withdraw them.

8904 Karen Drive
Fairfax, VA 22031-2731
October 12, 2004

Ms. Karen Arnett
Program Director
Environmental Community Organization
515 Wyoming Ave.
Cincinnati, OH 45215

Re: Ohio EPA's proposed revisions to OAC 3745-31-03

Dear Ms. Arnett;

I have been asked by the Environmental Integrity Project, an entity sponsored by the Rockefeller Family Fund, to review Ohio EPA's ("OEPA") proposed revisions to OAC 3745-31-03 and provide my evaluation of the proposed changes to the Environmental Community Organization ("ECO").¹ By way of background I have 20 years of experience in administering and enforcing the Clean Air Act, initially with the Environmental Enforcement Section of the United States Department of Justice and then with the United States Environmental Protection Agency ("USEPA"). In December, 2003, I retired from the Federal government after serving for 7 years as Director of EPA's Air Enforcement Division.

GENERAL COMMENTS

The OEPA proposal combines and confuses two separate issues – (1) the issuance of pre-construction permits ("permits to install" or "PTI"), which require a facility specific determination of Best Available Technology ("BAT") and (2) the subsequent issuance of operating permits ("permits to operate" or "PTO"), which incorporate the BAT limits and any State Implementation Plan ("SIP") limits and state-only requirements applicable to all existing sources in Ohio and may impose monitoring, reporting or other requirements. OEPA proposes to eliminate the concept of BAT for large numbers of new sources by asserting, without explanation, that requirements in the Ohio SIP for existing facilities are BAT for new sources. OEPA also proposes to replace current requirements for large numbers of existing sources to comply with limitations in operating permits with an "exemption" that substitutes an "honor system" for industry for the existing program of enforceable terms and conditions.

The most glaring deficiency in the proposal is the fact that Ohio EPA does not offer any real justification for (or technical evaluation of) its proposed revisions. There is no suggestion, let alone documentation, that the current rules are causing significant adverse impact on Ohio's businesses. Environmental permits do not necessarily delay a project since they can be processed

¹ The views expressed herein are my own and do not necessarily represent the view of any other entity.



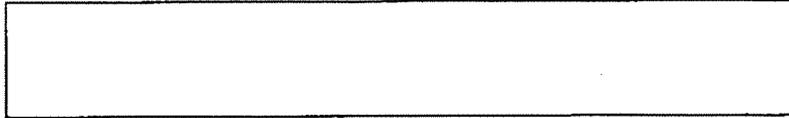
at the same time as building and other permits required by State and local governments. The major rationale put forward for the proposals is that there will be less for the OEPA staff to do if the proposals are adopted. But this is far too conclusory an argument to be meaningful for the public or for Ohio decision makers. Of course, OEPA's workload will diminish if one exempts large categories of the regulated community from clean air regulations. Indeed, OEPA's clean air workload will be reduced to zero if somehow the Clean Air Act was read as not to apply to Ohio sources. But this does not answer the question as to whether the public interest is better served if OEPA does less to protect air quality. It is likely that the proposed revisions will, in fact, have an adverse impact on the public health of the residents of Ohio. It is also likely that the proposed revisions will impose hidden costs on the residents of Ohio and forego opportunities to create new jobs in Ohio.

The science associated with air pollution has now matured to the point where we can reasonably calculate the costs to the public associated with air pollution. The current administration in Washington acknowledges that the benefits of reducing conventional and toxic pollutants outweigh the costs of doing so. Put another way, reducing pollution saves money – for the public and for businesses. EPA's most recent estimates put the benefits of reducing air pollution from the largest sources at \$110 billion per year², with costs estimated at approximately \$6 billion per year – a return of \$18 for each dollar spent. Nothing in the stock market can come close to this return on investment and, as our population ages we become increasingly aware that good health goes beyond economic issues. It is far more important to personal well being than other assets.

In many instances, while BAT for area sources may not be as stringent as BACT for major sources in terms of percent reduction in pollution, it is cheaper in terms of cost per ton or pollutant removed. When this occurs, minor NSR is a better return on investment than major NSR or any of the proposed Federal programs – and can provide an even greater return than the amounts cited above. Even where the cost per ton removed is twice that assumed in EPA's estimates, controlling pollution returns \$9 for each dollar invested. Since area sources tend to have shorter stacks than large major sources the adverse health and economic impacts associated with excessive emissions from area sources are more likely to be felt locally; conversely benefits associated with installing good controls are more likely to accrue to the local community. Thus, it is reasonable to at least consider whether maintaining programs that reduce pollution from smaller sources is in the public interest. The public should not be required to come forward with specific data and analysis respecting these issues – OEPA is the state agency charged with this task. OEPA should come forward with a serious analysis of this issue.

In a study published in December, 2003, OEPA career staff examined the problem of Ohio's backlog in issuing operating permits to smaller sources and thoughtfully considered various options that would speed the issuance of such permits. The study recommended the issuance of a combined permit to install and operating permit, which would simplify the process and cut OEPA and industry resource commitments significantly. Such combined permit programs drew generally favorable comments from those states that employ them. However, instead of adopting the staff recommendation, the current proposal would simply eliminate the requirement to obtain a

² Readers skeptical of the scientific estimates should simply ask local schools, clinics and health care providers about the upsurge of asthma in this country.



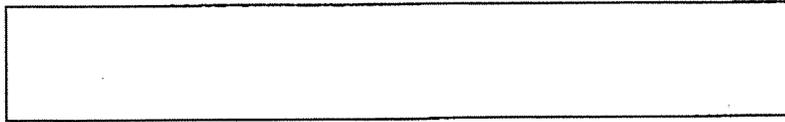
construction and operating permit for large numbers of area sources in Ohio. While a backlog of the dimensions reported by OEPA is not good management or good government, the operating permit backlog was not causing any discernable harm to sources that operated under their construction permits while they waited for their operating permits to issue. Allowing such a backlog to develop was also likely not a choice OEPA embraced, but a direct consequence of actions taken by the Ohio legislature over a period of years with respect to OEPA's budget.

In any event, the appropriate response to the issue raised by the 2003 study is for OEPA to address the backlog and search out reasonable opportunities to improve efficiency and for the legislature to provide adequate resources to protect the public interest; not to eliminate the underlying requirement. Moreover, as structured, *the OEPA proposal will not reduce the near term workload for OEPA permitting staff*. This is because the OEPA proposal offers sources that currently have construction and operating permits the right to claim "exempt" status and have those permits extinguished. Given the weak enforcement provisions of the "exemption" provisions one can readily envision that OEPA will be swamped with over ten thousand applications from sources that already have permits, but would prefer to be exempt.

It has also been suggested that there is no need to regulate smaller sources. However, it has long been recognized that successful management of air pollution must address instances where there are large numbers of smaller sources as well as those occasions where there are small numbers of larger emitters. For example, each of us has been asked to pay several hundred dollars more for every new car we purchase for mandated pollution control equipment – and today no one doubts the need for such controls. Indeed, it is difficult to imagine how much more serious this nation's air pollution would be without regulation of automobiles. As the higher emitting individual source categories – such as automobiles and heavy duty diesel engines – approach the technological limits of emission controls, Federal regulators have found it prudent to extend regulation to smaller and smaller sources, such as lawnmowers and weedwackers – yet each automobile, lawnmower or weedwacker is a far smaller source of emissions than the corporate sources that are proposed to be exempted by OEPA. Similar precedent is found in stationary source regulation, where the first category of emitters of toxic pollutants to be regulated under the Air Toxics program of the Clean Air Act was not large chemical plants, but dry cleaners. This suggestion by OEPA is a significant departure from a structure that has provided significant improvements for over 30 years and is even more remarkable coming from an organization that has shown itself unwilling or unable to regulate the largest sources within the state³.

OEPA claims that reducing load on the permitting staff could allow greater resources to be dedicated to enforcement and inspections. However, OEPA does not say that it *will* assign more staff to enforcement if its proposal is adopted. OEPA's suggestion is undercut by the existing operating permit backlog and by the provisions that allow sources to seek to terminate existing

³ OEPA has declined to participate in the Federal enforcement initiative against large power plants in the State of Ohio. Even now, after Judge Edmund Sargus ruled quite clearly in the Ohio Edison case that large power plants must put on modern pollution controls if they replace major components, OEPA has not sought to enforce the law against other Ohio power plants where there is clear evidence of similar violations. A recent citizen suit against Dayton Power and Light's Stuart plant and the pending Federal cases against Cinergy and AEP illustrates that there are other large violations in Ohio that could be pursued. Moreover, unlike states such as New York and North Carolina, Ohio has not adopted a multi-pollutant law to reduce power plant emissions over time and, indeed, OEPA is currently proposing to relax the law applicable to these sources.



permits if they qualify for the exemption. Presumably the permitting staff would continue to work to process permit applications and requests for permit terminations and not be reassigned to enforcement activities. Exempting sources from the obligation to obtain permits also exempts those sources from the obligation to pay permit fees. This will reduce the resources available to state and local authorities for permitting and enforcement activities.

The proposal contains no information, such as current compliance rates in the affected industries and an estimate of unlawful air emissions, to assist the public or Ohio decision makers in determining whether additional enforcement activities would be of significant benefit. Indeed, OEPA does not provide any information as to whether there are significant numbers of violators in Ohio, such that improved enforcement would yield environmental benefits, or whether it is suggesting that the adoption of the proposals would merely free OEPA resources to harass small businesses in Ohio over trivial matters. Finally, nothing in the record suggests that OEPA's managers will revise their views regarding enforcement of the Clean Air Act if the proposals are allowed to go forward. Given today's budgetary climate it is at least as likely that the agency's budget will simply be cut to reflect the reduced workload.

I believe it is incumbent on OEPA to carefully evaluate these issues in a technically sound manner and subject the results of such analyses to public review before attempting to go forward with its proposals. If Ohio adopts its proposed modifications as applicable state law, until and unless EPA approves a revision to the Ohio SIP (and EPA's approval is sustained in court), both the modified and the unmodified rules will apply to Ohio sources. Thus, unless OEPA is reasonably certain that the proposed revisions are approvable under applicable Federal law, adopting the rules will create confusion and uncertainty for all involved and an **additional** set of requirements for the regulated community. Under the Clean Air Act's anti-backsliding provisions, EPA could not properly approve revisions to Ohio's State Implementation Plans (the "Ohio SIP") unless OEPA can demonstrate that those revisions will not result in increased emissions.

Until the necessary analysis is performed, OEPA and the Ohio decision makers can only guess as to how much of an emission offset Ohio will need to generate from other source categories – both the general public and the business community are entitled to this information before a decision is made.

SCOPE OF THE PROPOSALS

While the regulatory and supporting documents available at this time are not clear as to the full scope of OEPA's proposals, it appears that those proposals fall into two distinct categories. The first is a complete exemption from Ohio's Minor New Source Review ("pre-construction rules") and from the requirement to obtain an operating permit that would establish long term emission limits and monitoring and reporting requirements – for facilities that claim that their emissions are below an arbitrary threshold. The second set of proposals would establish standard construction and operating permits ("permits by rule") for six categories of industrial sources.

Preconstruction Permitting – Why Bother?



The premise of preconstruction permitting programs, both for major sources and for area sources (sometimes known as minor sources), is a decades-old, bipartisan consensus that the best, most cost-effective time to install pollution control devices is when facilities are being newly constructed or substantially modified. Providing for an environmental review and advanced pollution controls for new sources was also viewed as a sensible, moderate approach to provide the emissions reductions needed to provide for robust economic growth while improving public health. As Ohio moves forward in the next few years to try to find the emission reductions needed to comply with more stringent ambient air quality standards it seems foolish and counterproductive to impose higher retrofit cost on existing businesses rather than take advantage of the greater cost-effectiveness associated with adding controls when new sources are being designed and built. While there has been substantial disagreement in recent years concerning the wisdom of this approach with respect to modified sources, to my knowledge no one, until this proposal by OEPA, has suggested that preconstruction review for new sources is inappropriate.

Best Available Technology is not frozen in time, but evolves as technology improves, while other Federal and State programs, such as the Federal New Source Performance Standards and their state analogues soon become obsolete. As major stationary sources, cars and trucks make continued reductions in their emissions, their share of the overall emissions inventory declines, while that of area sources increases. If population and business opportunity in Ohio are to continue to grow, major and minor NSR programs that provide for growth while seeking to achieve healthy air in the local community are critical. Federal cap and trade programs do not seek to protect air quality in individual communities; that function is met only in the NSR programs⁴. Moreover, pre-construction programs provide the State with the authority, not present elsewhere in State law, to decide (hopefully in rare instances) that a particular site is not appropriate for certain emitting facilities⁵.

The Exemption

The most troublesome aspect of OEPA's proposal is the creation of a self-policing exemption from the obligation to obtain either a construction permit or an operating permit. If a source claims the exemption it is essentially "out of the system." It will not be tracked and is highly unlikely to be inspected to determine whether it is entitled to the exemption or is in compliance with the terms and conditions of the exemption. Significantly, the structure of the exemption signals to the business community that OEPA does not consider the emissions from these sources to be important and does not really expect businesses to comply. If a source wrongfully claims the exemption or if it exceeds the emission conditions of the exemption –

⁴ In responding to concerns that modifying NSR rules applicable to major sources would adversely impact air quality, EPA officials assert that minor NSR programs are still in place to protect the environment. Here, OEPA proposes to reduce the effectiveness of its minor NSR program, while adopting EPA's rollback of the NSR program in a separate action.

⁵ As an example, I would point to an electroplating facility I visited a few years ago that emitted significant quantities of hexavalent chromium and was located immediately adjacent to a grammar school. While there is some disagreement on this issue, in my view, the authority to issue a permit includes the authority to deny issuance of that permit where this is a good reason to do so. Most local zoning laws do not speak to environmental issues and so the minor NSP permitting program may be the only opportunity for the state to protect its residents against environmentally unwise siting decisions.



virtually nothing happens! Under the proposal, in such instances the OEPA Commissioner is only empowered to *request the source to submit a permit to install*. Of course, the Commissioner also may not make such a request – and there is nothing the public can do to require the Commissioner to make such a request. Further, there is no obligation on a source that discovers that it is not entitled to the exemption to do anything until such a “request” is received. The proposal does not authorize the Commissioner to order a source to cease construction or operation until the appropriate permits are issued, or to impose a fine for unlawful emissions.

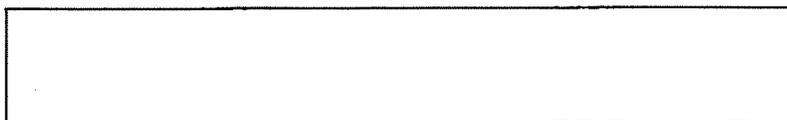
If a company is foolish enough to conduct emission testing in accordance with OEPA procedures, it must make such testing available to OEPA upon request, but there is no obligation to conduct testing sufficient to determine compliance. Simply put, the lack of any meaningful enforcement provisions in the proposed rule is an invitation for companies to cheat. It is unfair to the public and to those companies that comply with the law.

Permits by Rule

“Permits by rule” is an appropriate permit streamlining approach for addressing large numbers of similarly situated facilities in operating permit programs. The key distinction between these permit programs and pre-construction programs is that operating permits do not ordinarily establish substantive requirements for the first time; rather, such permits collect requirements that have been established elsewhere, such as SIP requirements and requirements established in construction permits. Key features of successful permits by rule include: (1) a clear statement of the applicability of the rule; (2) simple and clear substantive requirements; (3) a public submission by the source demonstrating that the source understands the requirements applicable to it (ordinarily this is accomplished by a simple notice – a postcard may suffice); (4) sufficient information provided to the permitting authority to enable it (and the public) to ascertain whether the source qualifies for the “permit by rule;” (5) sufficient monitoring to enable the source to document continuous compliance and (6) recordkeeping and reporting sufficient to enable the permitting authority and the public to ascertain the compliance status of the source.

“Permits by rule” is not an appropriate vehicle for pre-construction permits where the permitting authority must retain the right to decide that the particular site is not an appropriate location for the requested emissions increase and must make a facility specific determination of BAT.

The levels of performance set out in the OEPA proposal contain insufficient information to establish that they are BAT, or indeed, how OEPA came to those proposals. Simply incorporating existing SIP requirements is not the same as establishing BAT. The OEPA proposal seems to fall short of any reasoned approach to BAT in many instances. For example, OEPA proposes that Stage I nozzles be established as BAT for new gasoline stations in Stage I counties without any discussion of the relative benefits of the Stage II nozzles that are in common use in many parts of Ohio and the rest of the country and. Nor does the proposal consider advanced systems that are available to capture volatile organic compounds that would otherwise be released when the station’s tanks are filled. Similarly, while the lack of discussion in the OPEA documents precludes a final evaluation, the emission levels proposed for heaters and boilers and the control



requirements for paint booths and printers do not appear to be based on application of the best currently available technologies.

Most of the BAT proposals in the “permit by rule” provisions do not appear to be based on the application of any technology since they provide a single emissions limit without regard to the size of the facility. BAT should establish a minimum control device efficiency, which when multiplied by the capacity of the facility seeking to be permitted establishes a facility specific hourly emission rate. Further, the reference to the use of EPA’s AP-42 document is inappropriately vague and would suggest that sources are free to select the least environmentally protective result from that document. AP-42 contains the results of tests from a variety of different sources under a range of operating condition. Use of AP-42 in setting emission limits is complex and should not be ceded by OEPA to sources that may not understand the limitations of this data set. Further, the reference to “good engineering practices” for changing filters at paint booths is too vague to be enforceable – OEPA should determine how often the manufacturers of filters in use recommend replacement and specify the replacement criteria in its rule, or at least specify that the filters should be changed in accordance with the filter manufacturer’s recommendations.

SCOPE OF REVIEW

For OEPA’s proposals to replace the law in the current Ohio SIP, EPA will have to conclude that sections 110(l) and 193 have been satisfied. That is, OEPA must be able to quantify the impact of its proposed revisions and show that any increases are either offset or will not interfere with any applicable requirement concerning attainment and reasonable further progress. Moreover, conclusory statements, such as those in the record to date, will not suffice. In a recent case styled State of Alaska v. Whitman, the U.S. Supreme Court determined that EPA will also have to conclude that the OEPA decision was not arbitrary, but was supported by appropriate fact and analysis in its administrative record. Recent comments by OEPA representatives that such an analysis would be prepared prior to submission to EPA are especially troublesome, since they suggest an after-the-fact rationalization of a decision made for other reasons. The analysis should be conducted prior to the decision and made available for public comment prior to any recommendation by OEPA.

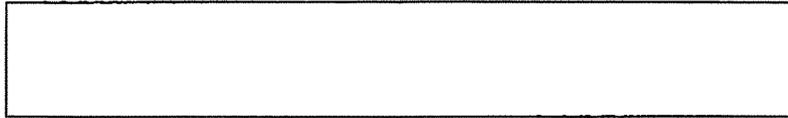
Section 110(l) of the CAA provides;

(l) PLAN REVISIONS.—Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. **The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act (emphasis provided).**

Section 193 of the CAA provides;

SEC. 193. GENERAL SAVINGS CLAUSE.

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the



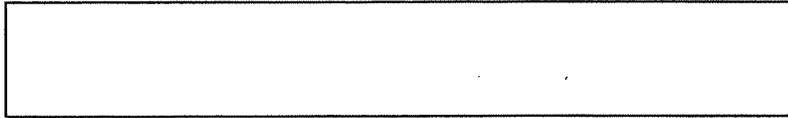
Administrator under this Act, as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms, except to the extent otherwise provided under this Act, inconsistent with any provision of this Act, or revised by the Administrator. **No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant (emphasis provided).**

Thus, in order to be approvable by EPA, the revisions to the Ohio SIP proposed by OEPA would have to be supported by a quantification of their impacts on emissions and a demonstration that proposed rule would not interfere with any applicable requirement concerning attainment (such as the existing minor NSR program) and, in nonattainment areas, that the emission increases will be offset by other new measures.

RECOMMENDATIONS FOR STREAMLINING

Over the past decade a number of permitting innovations have been developed that provide for greater ease of permitting without sacrificing environmental protection. OEPA should consider adopting one or more of these approaches in lieu of its current proposals.

1. **Automatic conversion of the PTI** – OEPA could revise its PTI program to provide that the permit to install also serve as the initial operating permit so the source would not have to apply for and obtain two permits within the space of one year. Thereafter, certain sources could qualify for operating permit renewals under a “permit by rule.” In the initial PTI the state would (1) decide whether construction is appropriate; (2) establish BAT; (3) incorporate other applicable requirements, such as SIP obligations and (4) establish appropriate monitoring and reporting requirements. This is similar to the program recommended in the December, 2003, study.
2. **Presumptive BAT** – For many industries BAT control technologies with high control efficiencies have been available for over a decade. In such instances OEPA could seek a broad-based consensus of industry, government and environmental organizations for a list of “presumptive BAT” controls for different pollutants, including the monitoring and reporting requirements appropriate for such controls. This list would be established by rulemaking and would sunset every 5 years to ensure that it represents current technology. In industries where “presumptive BAT” had been established, public comment on the PTI could be limited to facility specific issues such as the appropriateness of the siting.
3. **“Notice and go” for environmentally superior performers** – Again, working with industry, local governments and environmental organizations, OEPA could establish by rulemaking a “notice and go” program for those industries that were willing to commit to the highest levels of environmental performance. In most instances as long as the community understands that a proposed new small facility incorporates superior



environmental performance there will not be local objection to the project based on environmental considerations. In these circumstances, OEPA could offer a short form or "automatic" permit approval. Such a process could function much as a "direct final rulemaking operates today. The source could submit its permit application in accordance with the environmental performance requirements established in a rulemaking for "notice and go" permits and could commence construction at its own risk while the application is pending. The permit application would be subject to public comment. If no objection were raised within 30 days the permit would be final. If an objection were raised by any party, for any reason, the permit would automatically be processed in accordance with Ohio's standard permitting processes and construction would be suspended. Such permits should exclude any construction that is proposed in environmentally sensitive areas.

4. **Add resources to resolve the operating permit backlog** – This could be accomplished by adding contract resources over a period of three or four years. Funding would be at the discretion of the legislature. However, OEPA should also evaluate whether it is appropriate under Ohio law to provide Supplemental Environmental Project funds, obtained in resolution of environmental enforcement actions, to support this activity.

Conclusion

I recommend that ECO and other Ohio organizations concerned with securing a healthy environment object to the OEPA proposals. I offer the same recommendation to those with an interest in ensuring that government is conducted in a rational manner, based on a fair evaluation of the available facts, considering all aspects of the public interest. The Hippocratic oath, taken by physicians for centuries says, "First, do no harm." There are many opportunities to improve both the process and the substance of environmental regulation in Ohio and the nation. However, the OEPA proposal goes farther than industry needs to secure prompt issuance of environmental permits and is an invitation for years of contentious litigation. I recommend that OEPA open a fair dialogue, this time with all of the interested parties, to identify and adopt proposals that provide industry with the flexibility it needs while setting a clear path for the emission reductions that the public needs and is entitled to. Thank you for this opportunity to contribute to the public dialogue on this issue. Please feel free to contact me if I can be of additional assistance.

Sincerely,

Bruce C. Buckheit
Bruce C. Buckheit

Rick Carleski - respons to draft amendment

From: "Tony Szilagye" <3aws@accesstoledo.com>
To: "Richard Carleski" <rick.carleski@epa.state.oh.us>
Date: 10/12/2004 11:22 PM
Subject: respons to draft amendment

Richard J. Carleski, P.E.
Ohio Environmental Protection Agency, DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216

Dear: Mr. Carleski

The health of the citizens of Ohio can not afford a weakening of the Minor New Source Review. The consequences of this weakening will increase the already rates of respiratory illness, asthma, COPD, and other diseases. In addition higher rates of mercury and toxics will affect the food chain and increase the amounts of these toxics in our food. In addition the cumulative impact of these small air sources will be hidden from communities throughout Ohio.

The primary justification for the change is the fact that the workload of OEPA will be decreased. However, the complexity of this rule could cause a demand by companies for assistance in determining their eligibility for this program. Although the regulation applies to minor sources the cumulative impacts on the communities affected by the rule back are not minor. These impacts will leave communities defenseless and without any recourse in fighting pollution in their communities. Under these regulations facilities that are exempted could have a small overall impact on state air quality however, they could also have a very damaging impact on sensitive populations.

It is a completely irresponsible act to strip the states right shut down sources that are harming human health. Polluters no longer will have to meet the requirements of Best Available Technology. As a result bioaccumulative persistent compounds will be authorized. Overtime these will have an increasing impact on the health of all Ohioans.

Lastly public participation is completely gutted in this rule leaving ordinary citizens without any input on the industries that are affecting their health. I request that you reevaluate the impact of these regulations and stop them from moving forward into law.

Sincerely Yours

Anthony Szilagye
Chairman of the Western Lake Erie Sierra Club

**Communities United For Action
1814 Dreman Ave.
Cincinnati, Ohio 45223
(513) 853-3947**

SEP 20 10 19 AM '04

OFFICE OF THE DIRECTOR
OHIO EPA

Joe K...
Adv
MS
[Signature]

DAPC - NRN
We already respon
[Signature]

September 24, 2004

Chris Jones, Director, Ohio EPA
122 S. Front St.
Columbus, OH 43215

Dear Director Jones,

On behalf of Communities United For Action, I am writing express my opposition to the proposed rule changes to Ohio Administrative Code 3745-31-03: the permit exemption rule and the new categories for permit by rule.

We are concerned that these rules appear to violate the EPA's Environmental Justice policy in the following ways:

- The rule eliminates the public's opportunity to be informed about a new air pollution source. There will be no public notice, no public hearing, and no file on the source available to the public.
- The rule will eliminate the Director's ability to deny or place conditions on permits based upon consideration of social or economic impacts or other adverse environmental impact.
- The rule will make it impossible for Ohio EPA and other agencies to assess whether new polluting facilities cause disproportionate impact upon the communities in which they are located.

Communities United For Action is an organization made up of 42 member organizations in low and moderate-income neighborhoods in Cincinnati. Many of our communities are affected by pollution and are opposed to the proposed rules. Our air has some of the highest levels of air pollution in the nation. We want the Ohio EPA to do more, not less, to protect our air quality. These rules will not benefit our communities. We are aware that the Ohio EPA is short on funding for enforcement. Rather than changing the rules, we would rather support efforts to obtain more funding for the Ohio EPA.

Thank you.

Sincerely,

Marilyn Evans

Marilyn Evans, Executive Director
Communities United For Action



THE LEAGUE OF WOMEN VOTERS OF OHIO

17 South High Street, Suite 650 • Columbus, Ohio 43215

Phone (614) 469-1505 • Fax (614) 469-7918

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MCR-DK
ASAP

2004 OCT 14 AM 10:31
OFFICE OF THE DIRECTOR?
OHIO EPA

October 12, 2004

Chris Jones, Director
Ohio EPA
122 S. Front Street
Columbus, OH 43215

Re: Comments on Ohio EPA permitting change

Dear Director Jones:

The League of Women Voters of Ohio has several concerns relating to the proposed changes in regulations that would exempt certain small businesses emitting air pollution from the permitting process, and that would raise the level of emissions required to trigger the permit process for other facilities.

The League's stand on air quality dates back to the passage of the Clean Air Act in the 1970s, and we cannot agree with any efforts that would dilute the capacity of this legislation to regulate pollution. The League supports regulation and reduction of pollution from stationary sources and the regulation and reduction of ambient toxic-air pollutants. We believe this can be accomplished by:

- regulation of pollution sources by control and penalties;
- inspection and monitoring;
- full disclosure of pollution data;
- incentives to accelerate pollution control; and
- vigorous enforcement mechanisms.

Ohio EPA's proposal to no longer require permits for so-called minor air pollution sources or facilities, and to substitute a permit-by-rule procedure, is based on the premise that EPA staff, already hurt by budget cuts, could be freed of bureaucratic paperwork and able to focus on large polluters. However, local (neighborhood) air quality is every bit as important to public health, and we are not convinced that a change to this procedure would work to effectively control these sources. The ever-increasing incidences of asthma and its related costs are enough to justify continuing current procedures.

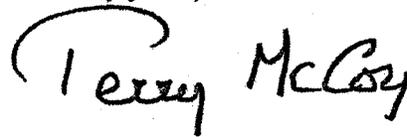
Furthermore, it does not appear that this proposed change will allow for public notification and comment. A key tenet of the League is the protection of the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible. All of these appear to be either not existent or more difficult under the new proposal.

Our same concerns for public health apply to the proposed threshold exemptions. Without record-keeping requirements, how is the public to know the impact on air quality of those unregulated pollutants?

Chris Jones
October 12, 2004
Page 2

We recognize your dilemma in seeking to maximize utilization of your staff in view of agency budget cuts, but we believe the overriding concern must be for the health and safety of all residents of Ohio. We are dismayed that there was no public input in the drafting of these proposals, and urge that Ohio EPA invite public citizens and environmental group representatives to plan with you for increasing agency effectiveness without jeopardizing public health and welfare.

Sincerely yours,

A handwritten signature in black ink that reads "Terry McCoy". The signature is written in a cursive style with a large, looping initial "T".

Terry McCoy
President

From: "Alex J. Sagady & Associates" <ajs@sagady.com>
To: <rick.carleski@epa.state.oh.us>, "Bob Hodanbosi" <bob.hodanbosi@epa.state.oh.us>, "Chris Jones" <Chris.Jones@epa.state.oh.us>, <Mike.Hopkins@epa.state.oh.us>, <paul.koval@epa.state.oh.us>, <Damico.Genevieve@epamail.epa.gov>, <rothblatt.steve@epa.gov>, <newton.cheryl@epa.gov>
Date: 10/18/04 2:09PM
Subject: Comments for filing on OAC 3745-31-03 Permit ExemptionAmendments

...sorry...minor URL error in my last message....the comments are also available on the web at:

<http://www.sagady.com/workproduct/CommentsOhioEPAPermitExemptions.pdf>

Attached please find for filing the joint statement of the following organizations concerning the draft amendments to OAC 3745-31-03 concerning emission threshold-based exemptions and six new permit by rule exemptions from requirements for air discharge permits to install and permits to operate:

- Buckeye Environmental Network
- Ohio Citizen Action
- ECO - Environmental Community Organization
- Allen County Citizens for the Environment
- Ohio Public Interest Research Group
- Maumee Bay Association
- National Wildlife Federation -- Great Lakes Natural Resources Center

This statement is also available at:

<http://www.sagady.com/workproduct/CommentsOhioEPAPermitExemptions.pdf>

If you should have any questions, please don't hesitate to contact me at (517)332-6971 if you have any questions.

Regards,

Alexander J. Sagady
 Environmental Consultant to
 Buckeye Environmental Network

=====
 Alex J. Sagady & Associates <http://www.sagady.com>

Environmental Enforcement, Permit/Technical Review, Public Policy,
 Evidence Review and Litigation Investigation on Air, Water and
 Waste/Community Environmental and Resource Protection
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=====

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**COMMENTS ON DRAFT OHIO AIR POLLUTION
RULE AMENDMENTS TO TERMINATE AIR DISCHARGE
PERMIT TO INSTALL REQUIREMENTS
FOR TOXICANT DISCHARGERS THROUGH
A REVISED EMISSION THRESHOLD EXEMPTION AND
SIX DIFFERENT NEW PERMIT BY RULE EXEMPTIONS**

Concerning Amendments to OAC 3745-31-03

Submitted to:

**Ohio Environmental Protection Agency
Division of Air Pollution Control
&
U.S. Environmental Protection Agency, Region V
Air and Radiation Division
Permits and Grants Section**

October 18, 2004

Coordinator & Sponsor:
Buckeye Environmental Network
Teresa Mills, Chairperson
PO Box 182, Grove City, OH 43123
(614)871-3529

**Additional Groups Supporting this Statement
are Listed on the Next Page**

Prepared by
Alex J. Sagady & Associates, Environmental Consultant
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A web copy of this statement is available at:
<http://www.sagady.com/workproduct/CommentsOhioEPAPermitExemptions.pdf>

Additional Groups Supporting This Statement

Ohio Citizen Action

Sandra Buchanan, Executive Director

614 W. Superior Ave., Suite 1200, Cleveland, OH 44113 (216)861-5200

ECO – Environmental Community Organization

Karen Arnett, Program Director

515 Wyoming Avenue, Cincinnati OH 45215 (513)761-6140

Allen County Citizens for the Environment (ACCE)

Attorney Bruce French, Chairman

PO Box 839, Lima, OH 45802 (419)222-6360

Ohio Public Interest Research Group (Ohio PIRG)

Erin Bowser, State Director

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Maumee Bay Association

Sandy Bihn, Chair

6565 Bayshore Rd., Oregon, Ohio 43618 (419)691-3788

National Wildlife Federation

Great Lakes Natural Resources Center

Zoe Lipman, Program Manager - Clean the Rain

213 W. Liberty Street, Suite 200

Ann Arbor, MI 48104 (734)769-3351

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1 Introduction

These are the comments of Buckeye Environmental Network and additional organizations concerning proposed administrative rules offered by Ohio Environmental Protection Agency (Ohio EPA) to terminate current requirements for getting permits to install for new and modified toxic air pollution sources meeting a new emissions-based threshold exemption or sources in six newly designated discharge source categories.

The Buckeye Environmental Network (BEN) is a non-profit organization with a citizen volunteer board of directors. BEN provides information, technical and organizing assistance statewide to disadvantaged communities on the effects of toxic and hazardous materials on communities, public health and environment. BEN has been doing this kind of work in our state for the last ten years. BEN is the convener and coordinator of this effort to provide comments to Ohio EPA in this draft rules amendment proceeding.

This statement is also supported by additional groups shown on the second cover page of this document.

Commentors are requesting this document be made part of the public comment record concerning these draft rules on exemptions from Ohio permit to install and permit to operate requirements for new and modified sources.

Both Buckeye Environmental Network and the named organizations insist that both the draft rules and the process by which the draft was developed are both grievously flawed from both a substance and process standpoint.

Environmental groups were never informed that this level of deregulation was contemplated as part of a so-called agency permit "efficiency" evaluation. Major features of the draft rule amendments, such as the so-called "one ton" list are fundamentally deceptive and misleading. Only an extremely close and detailed reading of the draft rules indicates that the effectiveness of the "one ton" toxicant list is modified by exceptions that "swallow the whole" and eviscerate any protectiveness that is otherwise intimated by the misleading name of this list of chemical toxicants.

Ohio EPA's utter failure to articulate the toxicological, risk assessment, risk management and air quality modeling basis of the draft rule has produced a non-transparent result which has significantly degraded the ability of the public to understand the proposed policy and to effectively articulate potential revisions.

The proposed permit exemption rules will seriously disenfranchise and/or terminate completely the ability of the public to exercise appropriate neighborhood and community participatory supervision over the siting and expansion of certain local air

pollution sources, including those not otherwise federally regulated as a source category or those in the six new permit by rule categories.

For these reasons and those cited below, Ohio EPA should withdraw this proposal until a more carefully defined approach can be crafted in draft form for first viewing.

2 Ohio EPA Should Not Establish an Air Permit to Install Exemption Process for Toxic Air Contaminants Whose Risk Management Objective is Solely to Show Conformance with the Agency's Present Primitive, Grossly Deficient, Non-Rule-based Process for Evaluation of Health Effects from Ambient Airborne Toxicant Exposures

Ohio EPA presently does not have any state administrative rules establishing clear risk assessment requirements and enforceable risk management policy goals for toxic air pollutants that are not federally regulated. The only rule-based risk management techniques available to Ohio are the Ohio BAT requirement, its minor source permit to install program and indirect controls on common criteria pollutants.

The agency has a non-rule policy for establishing maximum ground level concentrations of toxic pollutants based, in general, on ambient concentration limits that are 1/42th of Threshold Limit Values (TLVs) published by the American Conference of Governmental Industrial Hygienists. However this policy only addresses inhalation toxicity, only addresses compounds on the TLV list and does not properly address risk from airborne carcinogens. In addition, this primitive Ohio EPA policy does not address risk assessment associated with multipathway, non-inhalation exposures or ecological risk assessment.

Commentors assert that Ohio EPA's approach to the emission threshold permit to install exemption is a back door approach to accommodating regulatory relaxation to fit the lax requirements of this primitive air toxics risk assessment/risk management policy. This policy is badly in need of modernization and establishment in a new rulemaking.

Instead of institutionalizing deregulation of airborne toxicants through air permitting exemptions, Ohio EPA should first modernize its risk assessment procedures and risk management processes and targets for public health and environmental protection. Ohio EPA should first establish protective targets for maximum predicted risk from both inhalation and multipathway exposures and specific procedures for carcinogenic and non-carcinogenic risk assessment.

It is only within the context of a revised and strengthened risk assessment and risk management policy that any emissions-based and/or source category-based exemptions from air permitting requirements should be considered.

3 Ohio EPA's Proposal in Draft Rules for an Emissions-Based Threshold for Exemptions from the Ohio Permit to Install/Permit to Operate Requirement

Ohio EPA's proposal for an emissions threshold-based process claims:

"This rule is designed to exempt small, insignificant air pollution sources from the need to obtain a permit-to-install if the sources meet certain qualifying criteria."

"In order to qualify for the exemption, the air pollution project or individual sources must meet various tests. These tests are designed to make sure that only small, insignificant sources qualify for the exemption...."¹

Commentors deny Ohio EPA's draft rule demonstrates any such achievement. No information presently exists on the record showing that such exempted facilities will not cause unreasonable human health and/or ecological risks.

The thrust of the emission threshold-based proposal is to excuse toxic emission sources **not** subject to federal New Source Performance Standards and Maximum Achievable Control Technology requirements from the Ohio Permit to Install requirements as long as certain other emission thresholds are met for listed toxic chemical pollutants and common criteria pollutant emissions.

It will be up to the dischargers in their sole discretion to characterize their emissions of both common and toxic pollutants to see if they meet any applicable emission thresholds. The dischargers will make these determinations without any oversight by Ohio EPA, without making a public report of claimed emissions, without an annual sworn certification of compliance with the rules and without any public participation at all.

¹ Ohio EPA rule package "Rule Synopsis," p. 1

The draft rule contains the following lists of airborne chemical toxicants:

List	List Basis	Number of Pollutants on List
Great Lakes Binational Toxics Strategy Pollutants and IRIS Category A and B1 Carcinogens	Derived from other lists	14 chemical pollutants
The "1 ton" Threshold List	Unable to evaluate the basis of this list because OEPA has not coherently articulated its basis	About 416 chemical pollutants
The "10 ton/2 ton" Threshold List	Unable to evaluate the basis of this list because OEPA has not coherently articulated its basis; although these pollutants are deemed to be subject to stack dispersion and setback requirements because of their toxicity	71 pollutants

There is no clarity on how each of these lists were developed and justifications for the decisions made.

The consequence of the form and contexts of these lists, aspects of some of the chemicals on and off of the lists and other parts of the emission threshold-based draft rule language are discussed below.

3.1 The Basis for Annual Threshold Emission Criteria Shown for Great Lakes Toxicants Abdicates Sound Toxicology Approaches and Evades Ohio's Responsibility to Protect the Great Lakes Under the Great Lakes Air Permitting Agreement

Ohio EPA has admitted that the annual emission thresholds shown in the table for Great Lakes toxicants were determined by using its stock physical dispersion regime for a good engineering stack height and setback from a fence line to model a one in a million inhalation-only risk level-equivalent annual ambient toxicant concentration² with a back calculation to the emission source strength to come up with the draft rule Great Lakes and EPA carcinogen toxicant threshold.

By definition, the Great Lakes Binational Strategy toxicants are those whose environmental fate and transport and subsequent toxic effects are featured by air to water and air to land to water media deposition/transfer and subsequent contamination of aquatic species. It is contrary to legitimate toxicology analysis to pretend that such a

² October 12, 2004 telephone conference with Paul Koval.

Great Lakes regime of environmental fate and transport and production of excessive human health and ecological risk can be represented for regulatory purposes by an exercise in the prediction of inhalation-only risk and air-only exposure pathways.

As a result Ohio EPA's emission thresholds thus do not have a basis in the entire reason for the designation of these Binational Great Lakes Toxicants. Consequently, the permitting thresholds provide for unrealistic or absurd results. For example, Ohio EPA has proposed 260 lbs/year of mercury, 87 lbs/year of polychlorinated biphenyls and 0.03 lbs/year each for polychlorinated dibenzodioxins and furans as appropriate emission thresholds under its proposal. Adoption of these high thresholds for requiring an air permit to install would constitute an abdication of both the Great Lakes Water Quality Agreement with Canada (or its annexes) and the Great Lakes Toxic Substance Control Agreement by the Great Lakes Governors.

The Ohio EPA action would specifically abrogate an agreement entered by the Great Lakes environmental administrators known as the "Great Lakes States Air Permitting Agreement."³ This agreement, which was signed by Ohio, provides, in part:

"For the pollutants listed on Table A [which includes mercury], each permitting authority shall utilize all applicable air pollution regulations to insure that BACT is being installed on any new or modified source which is subject to the state's New Source Review Program, an on existing sources, considering a diminimus cutoff, which are required to obtain an operating permit. States which do not have the current legal authority to assure that BACT is installed on new and existing sources of the pollutants in Table A shall pursue through their appropriate regulatory process authority to implement the governors' and environmental administrators' agreements."

"For purposes of this agreement, BACT means emission limits, operating stipulations, and/or technology requirements based on the maximum degree of reduction which each Great Lakes state determinates is achievable through application of processes or available methods, systems, and techniques for the control of each of the pollutants listed in Table A, taking into account energy, environmental, and economic impacts, and other costs."

"Emission limits, operating stipulations, and/or technology requirements shall be established as permit conditions for each of the pollutants listed in Table A. Whenever warranted, sources will also be required to conduct an emission

³ A copy of this agreement is available at <http://www.sagady.com/stuff/GLStateAirPermittingAgreement.pdf>

verification test to assure compliance with the allowed emission limits during the initial verification test as well as during periodic verification tests.”

Ohio will be out of compliance with this agreement by setting such high thresholds for air permitting and by filing to have standards and procedures addressing both risk management and risk assessment for chemical pollutants that are persistent and/or bioaccumulative. Evaluation of such chemical emissions require multipathway risk assessment and multi-media/cross media transfer risk management considerations. Ohio EPA has not carried out such analysis as a required part of its air permitting programs. The draft exemptions from permitting requirements merely exacerbates such agency failures.

Ohio EPA’s approach to poly chlorinated dibenzo dioxins/furans does not recognize the hierarchy of toxicity displayed by various PCDD/PCDF congeners through a system of 2,3,7,8-tetrachlorodibenzo(p)dioxin toxic equivalents. A similar toxic equivalent approach is merited for the congener family of poly chlorinated biphenyls.

3.2 Ohio EPA Draft Rule Fails to Protect Public Health by Ignoring Many Substances that are Known and/or Suspected Cancer Causing Agents and by Failing to Incorporate Chemical Carcinogen Designations from Legitimate Institutions

One example in the rule of an antiquated approach that represents a non-precautionary and unprotective approach to health and environmental protection from airborne toxicants is Ohio EPA’s failure to consider a greater range of categories of carcinogens [cancer causing/promoting agents] for lower threshold and required permit determinations. Ohio EPA has only considered EPA IRIS listed carcinogens under category A (proven human) and B1 (human probable). This ignores potential carcinogenic compounds shown by animal evidence with no/inadequate evidence in humans (EPA category B2) and possible human carcinogens (EPA category C). This approach also ignores determinations of chemical carcinogenicity made by other legitimate agencies, such as the International Research on Cancer (IARC).

The following table illustrates some chemical contaminants that Ohio EPA ignores in risk management/risk assessments inherent in the draft rule exemptions from permitting requirements that are considered by IARC as proven/possible cancer causing agents:

IARC Chemical Carcinogens Not Adequately Considered by Ohio EPA in Risk Management/Risk Assessment Underlying Considerations in the Draft Permit Exemption Decisionmaking		
IARC Group 1: Proven Human Carcinogens		
aflatoxins	4-aminobiphenyl	asbestos
azathioprine	N,N-Bis(2-chloroethyl)-2-naphthylamine	bis(chloromethyl)ether
1,4-Butanediol dimethansulfonate	chlorambucil	1-(2-Chloroethyl)-3-(4-methylcyclohexyl)-1-nitrosourea
Cyclophosphamide	Diethylstilboestrol	Ethylene oxide
Formaldehyde	Gallium arsenide	Mustard gas
2-Naphthylamine	Nickel compounds (other than nickel subsulfide)	Plutonium-239
Several other radionuclides	crystalline silica	Talc containing asbestiform fibres
Coal-tar pitches & coal tars	Mineral oils	Wood dust
IARC Group 2A: Probably carcinogenic to humans		
acrylamide	benz(a)anthracene	bischloroethyl nitrosourea
1,3-Butadiene	Captafol	chloramphenicol
a-chlorinated toluenes	1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea	4-Chloro-ortho-toluidine
Chlorozotocin	Dibenz[a,h]anthracene	Diethyl sulfate
Dimethylcarbamoyl chloride	1,2-Dimethylhydrazine	Dimethyl sulfate
Epichlorohydrin	Ethylene dibromide	N-Ethyl-N-nitrosourea
Glycidol	Indium phosphide	IQ (2-Amino-3-methylimidazo[4,5-f]quinoline)
Lead compounds, inorganic	5-Methoxypsoralen	4,4'-Methylene bis(2-chloroaniline)
Methyl methanesulfonate	N-Methyl-N'-nitro-N-nitrosoguanidine	N-Methyl-N-nitrosourea
Nitrogen mustard	N-Nitrosodiethylamine	N-Nitrosodimethylamine
Phenacetin	Procarbazine hydrochloride	Styrene-7,8-oxide
Tetrachloroethylene	ortho-Toluidine	Trichloroethylene
1,2,3-Trichloropropane	Tris(2,3-dibromopropyl) phosphate	Vinyl bromide
Vinyl fluoride	Creosotes	Diesel engine exhaust
IARC Group 2B: Possibly carcinogenic to humans		
Several chemical contaminants; list available at: http://www-cie.iarc.fr/monoeval/crthgr02b.html		

3.3 The Listing Provisions of the Draft Rules would Permanently Deregulate Airborne Chemical Waste Dischargers from Permitting Requirements for All Chemical Compounds that Do Not Appear on Lists in the Draft Rule if the Common Criteria Pollutant Emission Thresholds are Met

Under the draft rules published by Ohio EPA, a toxic substance that does not appear on any of the 3 lists in the table above and is not otherwise regulated under federal jurisdiction will remain indefinitely unregulated. This static approach to chemical toxicology ignores advancing and increasing knowledge about potential health effects of particular compounds and toxic emissions and the need for state government to based decisions on the best data available..

While newly unregulated airborne toxicants will nevertheless be subject to some requirements under volatile organic compound and non-toxic particulate matter regulation, such regulation is inherently incapable of recognizing any specific chemical toxicant properties that might justify increased regulatory stringency, particularly from developing information as knowledge increases.

Federal air toxicant regulations were never intended to address all health risks from all airborne toxicants. Other states have recognized that they must make principled decisions to regulate airborne toxicants in state air permitting programs. Yet, Ohio EPA's approach would abdicate its mission of protecting Ohio citizens and their environment when specific airborne chemicals are not regulated by any current federal regulation.

The following are examples of substances with known dangerous toxicant or problematic properties that Ohio is choosing to deregulate. These substances do not appear on any of the draft listings in the proposed rule [some of these are regulated as toxicants in other states]:

A Very Small Subset of Substances with Known Dangerous Properties Either for Human Health, Communities or Environment to be Permanently Deregulated as Airborne Toxicants by Ohio EPA for purposes of the State's Air Permitting Program		
welding fumes	2,4,5-trichlorophenoxyacetic acid	teflon decomposition products
difluorodibromomethane	diesel exhaust particulate	synthetic vitreous fibers & refractory ceramic fibers
chlorpyrifos & several other registered pesticides	trifluorobromomethane	gasoline vapor
dichlorodifluoromethane	rosin core solder thermal decomposition products	dichlorotetrafluoroethane
brominated diphenyl ethers	glutaraldehyde	ethyl mercaptan
phenyl mercaptan	hydrogen bromide and hydrogen iodine	formic acid
portland cement dust	acetic anhydride	radium & thorium compounds
trimethylbenzene	nickel compounds other than nickel carbonyl and nickel subsulfide	aluminum chloride
anthracene	antimony trichloride	asbestos fibers
benzaldehyde	boron trifluoride	butyraldehyde
butyric acid	chlorinated paraffins	dimethyl disulfide
dimethyl sulfide	urethane	furfural
furan	asphalt fume	paraffin wax fume
phenanthrene	terpentine and pinenes	most poly aromatic hydrocarbons other than benzo(a)pyrene
sodium hypochlorite	most speciated glycol ethers	perfluorooctanoic acid
chloramine	tetrahydrofuran	most IARC carcinogens

3.4 As Written, the Draft Rules Authorize Emissions at Unpermitted, Unreviewed Emission Sources of up to Ten Tons per Year for the Vast Majority of All of the Listed Toxic Air Contaminants Compounds that are Volatile Organic Compounds or Solid Phase Particulate Without Any Regard for Downwind Ambient Exposures that would be Caused by Such Emissions

As written, the only restraint on unpermitted, unreviewed emission sources for the vast majority of airborne toxicants under the rule would be a ceiling of 10 tons per year for the total of all organic compounds (including designated volatile organic compounds) and 10 tons per year for the total of all solid phase discharge material as particulate matter. For most such compounds there would be no rules on stack heights and set backs from property lines or other conditions of air pollution dispersion. A careful reading of the rule indicates that the "one ton" list provides no such one ton limitation on emissions. The actual limit for unpermitted sources is, in fact, ten tons per year of emissions

from unpermitted sources that have no restrictions on the dispersion conditions for such emissions (i.e. stack heights and fence line setbacks).

The only exception on dispersion requirements is the list of 14 Great Lake toxicants and a few proven human carcinogens and another list of 71 other organic compounds which would have requirements for stack heights and setbacks.

Nothing in the draft rulemaking support materials provided to the public articulates the health protection basis and/or risk management basis of this draft policy. Nothing in the draft rule supporting materials articulates a design basis for expected dispersion relationships between the allowed dispersion regime (or lack thereof) and the fence-line protective basis for the rule. As a result, it is impossible to offer knowledgeable public comment on the draft proposal.

Given the abject failure by Ohio EPA to articulate the basis for weakening permit requirements for airborne toxicants, Ohio EPA should withdraw this proposal and not proceed to final proposal stage with anything at all like the present draft proposal.

3.5 Ohio EPA Has Failed to Recognize Short Term Toxicity of Many Chemical Contaminants by Failing to Provide Short Term Limits on Emission Sources Eligible for Air Permitting Exemptions

No aspect of the draft rule addresses any transient, short term emission phenomena for any of the listed toxicants. Some of these toxicants will have irritant and sensitizing properties that are significant and represent the primary public health concerns for short term exposure. The draft rule only address annual emissions and no restrictions at all are provided for 24 hour or 1 hour averaging times for maximum emissions and the implied exposures from such short term events. Treating all airborne toxicants in Ohio as though they do not have short term, acute toxic effects abdicates legitimate public health concerns about the toxicology of these chemical emissions.

3.6 Even Though Certain Pollutants Are Listed in the So-Called "One Ton" Table, the Text of the Underlying Draft Rule Authorizes Unlimited Gaseous Emissions for Certain Compounds at Sources Which Could Escape All Air Pollution Permitting Requirements When Not Otherwise Limited by Common Pollutant Limits

Because the draft rule has an exception tied to the "one ton" table that swallows most of the situations evaluated and because the only real restraint on Unpermitted sources is the 10 ton criteria pollutant limits on organic compounds and particulate matter, the

rule authorizes unlimited emissions of certain compounds present on the “one ton” list and still allows sources to escape air permitting requirements.

The draft rule authorizes unpermitted emission sources to release unlimited amounts of chemical toxicants that are gaseous pollutants that are neither organic compounds nor particulate matter.

Under OAC 3745-31-01(III):

““organic compounds” means any chemical compound containing carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonate, non landfill gas methane and ethane.”

Under OAC 3745-17-01(B)(12):

"Particulate matter" means any material, except water in uncombined form, that is or has been airborne, and exists as a liquid or a solid at standard conditions.”

This means that the following materials could not be construed as either organic compounds or particulate matter and could be released in unlimited amounts by Unpermitted, unreviewed emission sources under the relaxation sought by Ohio EPA and industry:

Chemical Toxicants on the “One Ton” List that Could be Released in Unlimited Amounts by Unpermitted, Unreviewed Emission Sources Under the Draft Rule		
hydrogen sulfide	hydrogen chloride	chlorine
chlorine dioxide	phosphine	osmium tetroxide (sublimated gases)
nitric acid fume	hydrogen bromide fume	hydrogen peroxide
hydrogen fluoride	molecular fluorine	arsine
ammonia	hydrazine	titanium tetrachloride fume
selenium hexafluoride	sulfur hexafluoride	

Given that the draft rule allows unrestrained, unpermitted and unlimited release of these compounds, there is no possibility that any aspect of the rule represents any kind of a risk management approach at all for these substances. Ohio EPA’s draft rule utterly fails from a health and environmental protection standpoint. This is a particular onerous failure given that many of these gases are acutely toxic and cannot be risk-managed solely with long term exposure limitations.

4 Ohio EPA's Proposal to Establish Six New Permit by Rule with Exemptions from the Ohio Permit to Install/Permit to Operate Requirement

4.1 The New Permit by Rule Exemption for Natural Gas Boilers Should be Abandoned

Ohio EPA proposes a permit by rule exemption for natural gas boilers controlled with low NOX burners that have heat input ratings from 10 to 100 million BTU per hour. These are relatively large units and will frequently be found in aggregate with other emission units at large sources. Ozone and PM 2.5 control strategies may ultimately call for increased emission controls for such units that exceed what Ohio EPA has provided in its draft rules.

New source review of aggregated sources has the potential to trigger additional control technology evaluation and control requirements for these boilers, notably in nonattainment areas. The draft proposal cannot be allowed to cause such units to escape such control technology scrutiny or their effects in consuming PSD increment..

There is no requirement that the particulate emissions limitation for boilers and heaters reflect both filterable and condensible particulate matter.

Process heaters that are integral to a drying operation should be disallowed for coverage because of the expected problem of thermal decomposition of the dried material or flash-off of dried surface and the additional emission inherent in such a situation.

4.2 Ohio EPA Has Not Created/Published a Record Sufficiently Detailed to Justify its Auto Body and Printing Source Category Exemptions from Air Permitting Requirements

Ohio EPA has not shown in its draft rules publication and supporting documents why allowing sources of emissions in the range of 10 tons without permitting will be sufficiently protective for chemical compounds typically in use in these industries.

For example, there is no attempt in the rule to restrict operations of the facilities subject to permit by rule to commercial/industrial-only zoning areas or to otherwise provide that adjacent properties could not be residentially zoned.

In particular, it strains credulity to assert that an auto body refinishing operation with emissions of nearly 6 tons per year of a single HAP and up to 11.7 tons of all HAPs will be sufficiently controlled with a dispersion regime involving a 16 foot stack and a sixty foot stack setback from what could be residential neighborhoods. Instead of requiring good engineering practice stack heights, this rule institutionalizes the worst

features of bad dispersion practice in this industry with its emission discharges. Note also that the rule doesn't provide for a compliance method and recordkeeping for ensuring that HAP emissions conform to the rule for the auto body sector.

Similarly, putting no minimum setback/stack conditions on printing facilities discharging in the 5-12.5 ton per year range for hazardous air pollutants does not appear to be justified by any valid consideration of risk assessment and risk management.

Ohio EPA must be compelled to explain in detail why such high emissions that could potentially be adjacent to residential areas should, in fact, be considered as fully protective of public health for a range of chemical compounds commonly used in that industry and for both potential acute and chronic effects of such expected ambient exposures. There has also been no showing that odor problems would be prevented for typical chemical emissions discharged by sources in this particular sector.

5 Administrative Process and Federal Clean Act Issues Inherent in Ohio EPA's Draft Rules Package Terminating Certain Emission Sources from Applicability for Ohio Permit to Install and Permit to Operate Requirements

5.1 It is Not Correct for Ohio EPA to Insist that the Process-Review-Approval Performance Aspects of the Ohio Best Available Technology Requirement Under an Air Permitting System Will Continue to be Applied to Self-Regulated Facilities Operating Under the Envisioned Exemptions from Permit to Install Requirements

Ohio EPA requires that sources subject to the Ohio new source review use "best available technology" (BAT) which is defined as:

"(P) "Best available technology" means any combination of work practices, raw material specifications, throughput limitations, source design characteristics, an evaluation of the annualized cost per ton of air pollutant removed, and air pollution control devices that have been previously demonstrated to the director of environmental protection to operate satisfactorily in this state or other states with similar air quality on substantially similar air pollution sources." OAC 3745-31-01(P).

A decision on Ohio BAT as defined is an explicit part of the required decisionmaking criteria by the Director of Ohio EPA under 3745-31-05(A)(3).

Ohio EPA has published an interpretive guide #42 as to the meaning of Ohio BAT which includes consideration of environment factors, such as air and water quality

impacts, land impacts, aesthetic impacts and the avoidance of “excessive degradation of these environmental areas.”

A fundamental feature of BAT decisionmaking is that sources make a technology-based demonstration subject to Ohio EPA review and approval inherent in an issued Permit to Install with required emission limitations, work practices and reliance on the content of the permit application. It is simply not correct for Ohio EPA to insist that a similar or the same level of BAT air pollution control efficiency and pollution reduction will, in fact, be achieved through source self regulation in the context of an exemption from the permit to install requirement. Under a permit exemption there simply isn't anything close to the same level supervision of source accountability and compliance which would be required under an air permit.

As a result, there is no way to ensure that sources operating under permit exemption are responsible for BAT emission reductions. The proposed new exemptions amount to a significant relaxation of current Ohio EPA air pollution control requirements.

5.2 Elements of the Current Ohio BAT Process Within Ohio Minor Source Permit to Install Review are an Established Element of the Approved Ohio State Implementation Plan Under the Clean Air Act that Cannot be Weakened in a Manner that Jeopardizes Attainment and Maintenance of National Ambient Air Quality Standards or Reasonable Further Progress Towards Attainment

Ohio EPA has already heard previously from U.S. EPA Region 5 that the Best Available Technology requirement cannot be summarily ended or rendered non-federally enforceable because the Ohio BAT requirement is part of the approved State Implementation Plan under the Clean Air Act.

Similarly, Ohio EPA cannot now simply eviscerate Ohio BAT requirements as applied to an entire subset of sources which it now proposes to excuse from such BAT requirements through new emission threshold exceptions to the permit to install requirement.

First, Ohio EPA cannot demonstrate in a SIP amendment proceeding that the existing Ohio BAT requirement will be maintained by sources presently or prospectively subject to minor source permit to install requirements that would now be exempt. Ohio EPA cannot make such a demonstration because Ohio BAT requirements would no longer be federally enforceable as a practical matter. All state implementation plan requirements must be federally enforceable through emission limitations and conditions limiting the potential to emit in a written instrument, such as a minor source permit or

general permit. This written instrument would no longer exist under the draft emissions-based permit exemptions.

Since Ohio EPA cannot make a credible and compliant demonstration as a SIP revision showing that control requirements for minor sources are not jeopardized or relaxed by the draft permit exemptions, it follows then that Ohio EPA will not be in a position to demonstrate that such a relaxation will not interfere with attainment and maintenance of National Ambient Air Quality Standards and Reasonable Further Progress Requirements. Moreover, such a new exemption will also jeopardize compliance with Reasonably Available Control Technology requirements applicable in nonattainment areas.

Ohio EPA cannot at once argue that emissions reductions from BAT are inconsequential and then argue that BAT is necessary for proper environmental protection. No quantitative analysis has been provided as to the amount of increased emissions that will result from enactment of these new exemptions. Such analysis must be required by U.S. EPA before any such exemption scheme could possibly be approvable as an Ohio Statement Implementation Plan revision.

Existing minor source emission units with existing permits and emission limitation less than 10 tons per year of organic pollutants seeking coverage under the new exemptions would essentially be permitted to increase allowable emissions to just under 10 tons of VOC organics per year. No evaluation of this emission relaxation was provided in any analysis with the draft rules.

5.3 Ohio EPA's Draft Rules Do Not Contain Provisions to Prevent the Envisioned Permit to Install Exemptions from Interfering in Major Stationary Source/Major Modification Permitting

Both the emission threshold based permit exemption provision and the permit by rule exemption for 10 to 100 million BTU/hr natural gas fired boilers have enormous potential to interfere with pre-existing new source review procedures for major stationary sources and major modifications in Ohio.

The draft proposal contains a "Comment" on this topic, but the comment itself is an oxymoron:

"Comment: The following exemptions relieve permittees from the obligation to apply for and obtain a permit to install. They do not, however, relieve the permittee from the requirement of including the emissions associated with the exempt sources into any major new source review permitting action."

First, the comment is not rule language that prevents the objectionable concept it discusses. Commentors could not find any such language in the draft rule which achieves the prohibition discussed in the “comment.”

Second, any rule that acts to exempt an emission unit from aggregation in a larger project from the requirements for major stationary source/major modification new source review permitting, control technology review and air quality impact assessment cannot be considered as part of a federally approvable state implementation plan since it undermines federal Clean Air Act requirements for new source review. The Ohio permit exemptions cannot lawfully serve as a vehicle for any kind of dis-aggregation and/or separation of what otherwise would be a major stationary source and/or major modification into parts which NSR applies and parts to which NSR doesn't apply. Such a practice violates longstanding federal court rulings concerning the definition of a major source and major modifications. Any attempt to somehow separate out large, exempt emission units that are actually a part of a new major source and/or major modification is an unlawful attempt to evade the required control technology and air quality impact reviews as well as the requirement for the major source/major modification NSR permit.

5.4 The Draft Rule Could Impermissibly Authorize an Exemption from Permitting Requirements for Some Major Hazardous Air Pollutant Sources

The Clean Air Act defines a major source of hazardous air pollutants to include any source that discharges 10 tons of any single HAP or 25 tons discharging any combination of HAPs to be a major source. In addition, the Administrator may establish a lesser quantity to be a major source for a particular substance on the basis of its persistence, potential for bioaccumulation, other characteristics of the air pollutant or other relevant factors.

Under provisions of the draft rule, an emission source having a stack emission of less than but not equal to 10 tons and a fugitive emission of less than but not equal to 2 tons of compounds listed in the “10/2 Compound cut-off Table” is exempted from permit to install requirements [with other non-emission threshold considerations being met]. This draft provision is highly problematic because it, together with other aspects of the emission threshold table, would potentially exempt major sources of hazardous air pollutants as defined by the Clean Air Act in source categories for which Maximum Achievable Control Technology standards have not yet been promulgated. Under 42 USC Sec. 7412(g)(2), case by case MACT determinations are required for major HAP sources and/or modifications for which MACT standards have not yet been promulgated.

The permanent exemption language in the proposed rule does not clearly embrace case by case MACT determinations as pre-existing “standards,” yet the draft rule clearly

provides for procedures by which major HAP sources could navigate toward an exemption from permit to install requirements.

The draft rule language allows major HAP sources and major modification HAP sources to gain an exemption from permit to install requirements under the following emission scenarios.

Review of the “threshold exemption table” indicates that applicable limits in that table do not reach all of the CAA Hazardous Air Pollutant compounds. The following are listed CAA HAPs that are not organic compounds limited by the 10 ton “organic compound” threshold as that term is presently defined in Ohio EPA regulations:

CAA Hazardous Air Pollutants that are Not Organic Compounds and not listed on the Draft Great Lakes Toxicants/Carcinogen Table		
asbestos	chlorine	hydrochloric acid
hydrogen fluoride	phosphine	phosphorus
titanium tetrachloride	antimony compounds*	cobalt compounds*
lead compounds**	manganese compounds*	fine mineral fibers
nickel compounds other than nickel subsulfide	radionuclides	selenium compounds*
* for purposes of this table exclude organo-metallics compounds		
** the threshold exemption table includes only elemental lead and not lead compounds		

The gaseous compounds in the table are not addressed at all by the threshold exemption table. The metals are addressed by the particulate matter limitation of 10 tons. Under provisions of the draft rule as proposed, a source emitting a combination of up to 10 tons of a combination of organic compounds that are HAPs, up to 10 tons of a solid phase compound such as metal HAPs and well over 5 tons of a gaseous HAP which is not an organic compound would be a major HAP source which would be exempted from permitting requirements under the draft rule if there were no pre-existing, promulgated MACT standard.

Similarly, a source that emitted over 10 tons of any single non-organic gaseous HAP in the table above would be a major source exempted from permitting requirements where no MACT standard existed.

5.5 The Staging of Ohio EPA's Efforts for Emission Threshold Based Permit Exemptions and Permit by Rule Categories Improperly Prejudices Future State Implementation Planning for Ozone and PM 2.5 Controls in Near Term Nonattainment Areas

Ohio faces significantly air pollution control planning obligations to address widespread nonattainment designations for ozone and PM 2.5 throughout the state. The state must come up with a mix of control measures to address needed emission reductions for emissions to control these ambient air quality problems.

Although Ohio has obligations to plan for nonattainment area emission reductions, the exemptions contemplated by the draft rule prejudice what control requirements might have to be established in these nonattainment areas as part of Reasonably Available Control Technology determinations and other measures need to attain and maintain the National Ambient Air Quality Standards for Ozone and PM 2.5. Given the potential intractable nature and severity of these regional air quality problems, it does not reflect wise judgement on the part of Ohio EPA to now excuse sources from permitting and control requirements now and then later have to reimpose such burdens because they are then needed for the nonattainment area control strategy.

5.6 Prospective Synthetic Minor Emission Sources Relying on Conditions to Limit the Potential to Emit to Stay Below 10 Ton/Year Emissions Thresholds Must Not Be Permitted Use of Such Permit to Install Exemptions

A source relying on production rate, throughput and operating rate restrictions to stay below a 10 ton per year limit on emissions must not be permitted to use the emission-based permit to install exception. A source that would be major except for such limitations must have federally enforceable limitations on the potential to emit. Without a permit there can be no federally enforceable limitations; as a result synthetic minor emissions sources must not be allowed any access to the exemptions from PTI requirements in the draft rules.

5.7 Ohio EPA Has Not Clearly Indicated that Condensable Particulate Matter, Along with Filterable Particulate, Must be Subject to the Ten Ton Limit

It is unclear in the rules whether the 10 ton particulate and 10 ton PM-10 limitation in the "emissions threshold table" includes the sum of both filterable and condensable particulate matter. Any interpretation of this to include only filterable PM should be rejected.

6 Other Comments

Provisions at section A(1)(l) on storage tanks address the matter of “true vapor pressure” as defined in the Ohio EPA VOC rules for tanks as “equilibrium” vapor pressure and liquid in equilibrium. However, the rules do not consider that some organic liquids may issue from processes in non-equilibrium form as unstable liquids with dissolved gases with greater potential for emissions than would be indicated by the “true vapor pressure” as defined.

Some provisions of the rule contain the very vague paragraph or others similar:

“Sources of the chemical compound that have been reduced as part of the project may be counted as a reduction in the summation if the egress parameters of the new or modified air contaminant sources are similar to or better (e.g. taller stack, higher exhaust gas flow rate, etc.) than the egress parameters of the air contaminant sources with reduced emissions; or”

What this means is subject to highly varying interpretations and the language isn’t at all clear as to its impact.

The draft rules at talk about installation of equipment but fail to consider process changes at existing equipment and other modifications of existing facilities as to changes and modification at existing sites. It is unclear whether such modifications are similarly exempted.

There is no public participation required any decisions on existing permit holders who seek to be covered under the non-permitting exemption.

Twelve month periods under the rule are defined as block calendar periods instead of more restrictive rolling 12 month periods.

Rec'd by DAPC, OEPA

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October 13, 2004

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Re: Comments of the Industry Members of the PPEC Permit Exemption Threshold Workgroup (PET) on Ohio EPA's draft rule changes to OAC 3745-31-03.

Dear Rick:

The following comments are submitted on behalf of the Industry Members of the Permit Processing Efficiency Committee's (PPEC) Permit Exemption Threshold Workgroup (PET).

First, we commend Ohio EPA for engaging in the effort to improve efficiency in the air program. For over two years, all members of the PET have expended significant time and resources in attempt to craft an exemption that would remove smaller emission units from the PTI process, while at the same time ensuring that those emission units comply with all applicable laws. From day one, there was consensus on that initial concept as a way to reduce the permitting burden without sacrificing environmental protection.

The emission threshold exemption would build on the other permanent PTI exemptions that have been in place for many years, and the benefit of removing these small sources from permitting is obvious. Most PTIs for these small sources simply require compliance with applicable laws as the Best Available Technology (BAT) requirement. Maintaining an obligation to comply with applicable laws, but removing the time and resources necessary on the part of Ohio EPA to permit these small sources will free additional resources to be directed at more environmentally significant sources in the state.

At the same time, this exemption would allow eligible Ohio businesses to install certain equipment without waiting out a permit process that can add 3-12 months to the critical path for a project. The fast-paced, global market place often rewards the companies that can adapt most quickly and efficiently to meet market demands. Also, with eligibility for this exemption contingent on meeting a low emission rate, businesses have an added incentive to reduce emissions to secure this expedited path for installing new and improved equipment. Streamlining permitting for low-emitting units will help Ohio businesses be responsive to economic opportunities that create jobs with new incentives to reduce emissions.

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While we lend our general support for the process and the development of a threshold exemption rule, we appreciate the opportunity to share some concerns with the current draft:

1) The Complexity of the Draft Rule

While the industrial members of the PET strongly support the concept of exempting small sources from the PTI process, we advocate for an exemption that is not *more complex* than the permitting regime it would replace. The complexity of the draft rule is a problem and will likely limit its use.

Ohio EPA introduces significant complexity by departing from the hazardous air pollutant (HAP) list established in the Clean Air Act by Congress with an established mechanism for updating and revising that list. Ohio EPA adds hundreds of compounds to its tables and charges those seeking to use the exemption with the responsibility for determining the amount of each of these emitted before claiming a permit exemption. We encourage Ohio EPA to simplify the rule by limiting the compounds of concern to the established list of HAPs and the criteria pollutants regulated by state and federal law.

Further confusion is created by a lack of coordination between the emission threshold exemption and Ohio's legislative exemption for de minimis sources (Ohio Revised Code section 3704.011) and the rule implementing it at OAC 3745-15-05. The Ohio Legislature expressly exempted from Ohio EPA regulation air contaminant sources with emissions less than 10 pounds per day that do not emit more than one ton per year of hazardous air pollutants. A de minimis emission unit that emits 10 pounds per day and 1.8 tons per year of a non-HAP listed on the 1.0-ton per year table in the emission threshold exemption rule is excluded from permitting by the Ohio Revised Code, but ineligible for the permit exemption rule. This is unnecessary confusion. The permit exemption threshold should always be greater than the de minimis threshold. This can be easily achieved by establishing 2.0 tons per year as the minimum threshold of emissions of any air contaminant before permitting is required.

Finally, the rule should include some safe harbor for those evaluating emissions so that a company will know with certainty when its investigation is complete. Companies should be able to rely on MSDS sheets, manufacturer's formulation data, and published emission factors to determine whether emissions are within the exemption thresholds. This will help reduce the risk associated with using this rule and, thereby, increase its use.

2) Application of Ohio's Air Toxics Policy

As alluded to above, we have a significant concern with the transformation of the original principle that the emission units exempt from permitting under this rule must still comply with all *applicable requirements*. Ohio EPA's insistence on incorporating provisions to deal with air toxics goes beyond any applicable rules. This concern is well founded, and is reflected in the Ohio Supreme Court's decision in National Lime and Stone when the Supreme Court stated "*Keeping in mind the purposes of R.C. Chapter 3704, we must strive to reach a balance between promoting and enhancing clean air and protecting and encouraging economic growth and opportunities for people of this state. This requires that business entities not be subjected to the*

*interminable task of dealing with excessive regulation or requirements not explicitly covered by statute or rule”.*¹

When an entire page of a complex rule applicability flowchart is dedicated to determining whether a source is exempt based on provisions that are not part of current regulations, we feel that the goal of a simple rule that requires compliance with *existing applicable rules* has not been achieved.

3) The Competitive Position of Ohio

This effort had the potential to benefit the competitive position of Ohio. Through the course of the PET’s work, it was demonstrated that other states do not require installation permits (or monitoring, reporting, record keeping) to anywhere near the same extent as Ohio. In fact, consultants have recounted specific examples where clients have been advised to locate outside of Ohio due to the onerous nature of DAPC’s permitting program. Unfortunately, the draft rule still puts Ohio at a substantial competitive disadvantage compared to our neighboring states. For example, Kentucky, which shares a metropolitan area with Ohio, requires the equivalent of a PTI when potential emissions exceed 25 tons per year (tpy) of any non-HAP regulated air pollutant. Ohio proposes a 10-tpy threshold for most criteria pollutants. For HAP emissions, Kentucky uses the federal major source thresholds to trigger permitting (10-tpy for any single HAP and 25-tpy for all HAPs combined). Ohio proposes a complex system that establishes thresholds for 450 compounds (262 more compounds than Kentucky considers) and subjects most of these to a permit when emissions exceed 1-ton. We ask that you consider whether any true environmental gain is achieved by maintaining a more restrictive permit burden *relative to our neighboring states*, and that you consider the potential economic cost of sustaining a more burdensome permitting system than the states who are prime competitors for attracting and keeping jobs in Ohio.

The following is a list of additional comments related to the emission threshold exemption portion of the rule (in order):

1. Language at qq (ii) (p.7)

The threshold exemption is currently one of the “permanent exemption requirements” of OAC 3745-31-03(A)(1). Thus, this rule must carve itself out of the paragraph (ii) provision that states that an air contaminant source subject to the permanent exemption requirements cannot be eligible for the subpart (qq) threshold exemption.

¹ *Celebrezze v. Nat’l Lime and Stone*, 68 Ohio St. 3d 377 (1994)

2. Language at qq (iii) (p.7)

The draft rule states “enter paragraph text here.” We are not sure what that text is intended to be. The text should clarify which of the subparts (a) – (e) are prerequisites to the exemption and which are optional. As currently drafted, the “or” at the end of paragraph (d) could be interpreted to mean that compliance with any one of these paragraphs qualifies an emission unit for the exemption. We do not believe that was the intent. The language should require that a source meet paragraphs (a) – (c), and either (d) or (e).

3. 3745-21-07(g) (2) Exemption Level (p.7)

Ohio EPA has recently released for interested party comment revisions to OAC 3745-21-07(g) that would remove the 8-pound an hour and 40-pound per day limit for new OC sources and most existing sources. We question why columns B and C of the threshold exemption table have a lower threshold (7 tons) than the general threshold (10 tons) given this development.

4. Language at qq (iii) (c) (see also qq (iii) (e) (v)) (p.7, 9)

The draft rule states “sources of the chemical compound that have been reduced as part of the project may be counted as a reduction in the summation if the egress parameters of the new or modified air contaminant sources are similar or better . . . than the egress parameters of the air contaminant sources with reduced emissions.” Can OEPA explain exactly what this means and give us an example? This is an area where the rule can be simplified. OEPA should eliminate the language that requires evaluation of egress points in order to consider concurrent project emission reductions. If a source is reducing emissions at the facility where the project is being installed, only the net increase in emissions should be evaluated to determine whether the emission exemption thresholds are met.

Screening models used to determine acceptable risk under Ohio’s air toxic policy assume a single emission point even when the actual source may emit from multiple egress points. For the small sources considering this permit threshold exemption, a screening approach is also appropriate. As such, these small sources should be able to assume that all project emissions come from a common egress point so that only the net increase of each pollutant is compared with the permit exemption thresholds. This will help simplify the rule.

5. Language at qq (iii) (c) (p.8)

The creation of a “super toxics” table was something the workgroup agreed was appropriate. In terms of drafting, the table in the draft rule has a number of chemicals with very low annual emission rates. If sources conduct sampling for them they may not detect them at all, but there still may be theoretical literature that suggests the possible presence of one of these chemicals in their operations. We suggest that the Ohio EPA add a condition that establishes sampling results below the analytical detection limit be considered as zero. In addition, we suggest that the wide range of assigned emission rates in the table conform to a more simplified numbering system (such as multiples of one: one-tenth, one, ten, one hundred, etc.).

We have questions regarding two compounds on the table. We wonder why both vinyl chloride and benzene are on the table since both have NESHAP Standards assigned to them, so presumably would be ineligible for the exemption. If vinyl chloride is eligible for the exemption, we wonder why it is on this table with an assigned 2,000 pounds per year emission rate. At this emission rate we think it belongs on the 1 TPY compound table.

6. Language at qq (iii) (e) (v) (b) (p.9)

The sentence should read “A description of *any* air pollution control equipment . . .” rather than “the air pollution control equipment.” As currently drafted, it infers there must be some air pollution control equipment.

7. Language at qq (iii) (e) (vi) (f) (p.10)

The notification states the regulated entity must submit information on the uncontrolled PTE and expected actual emissions for each pollutant for each air contaminant source, in tons per year. Language should be added referencing the information must be submitted for each air contaminant source “for which notification is being submitted,” so that the rule does not infer this information must be submitted for the whole facility.

8. Language at qq (g) (p.11)

The listing of all state and federal rules *is more stringent* than a PTI application. PTI applications do not require a listing of all applicable requirements, although Title V applications do. It seems contrary to the simplification goal to require a notification for an exemption to contain more than what is required in a PTI application. In addition, the failure to list an observed applicable requirement (i.e., emergency episode plans) subjects one to a \$1,000 fine. This should be revised to require the reporting of applicable emission limits only.

9. **Listing of 1.0-ton and 10/2-ton compound tables (begin p.13)**

Since 2003, the amount of time spent by the workgroup discussing specific compounds and the Agency's formula for coming up with the tables proposed in the draft rule cannot be overstated. We acknowledge the significant level of effort by all parties, and reiterate the critical importance of taking whatever additional time is needed to ensure the accuracy of the tables before they are established in rule. The following comments are not intended to invalidate the global comments above that seek to limit these tables to the HAP compounds and to set more reasonable emission thresholds for HAP compounds. Rather, they are offered in our ongoing effort to improve upon the compound tables drafted by the Agency.

Prior to this submittal we forwarded information to DAPC regarding numerous incorrect CAS #s listed in the draft rule (this may have been a cut/paste error). We have also relayed information regarding several incorrect IRIS numbers that affect whether or not a compound is on the 10/2 compound table. We will continue to highlight any additional errors we find.

In terms of format, we suggest Ohio EPA combine the 1 TPY and 10/2 TPY lists by just having 4 columns - Chemical Name, CAS #, 1 TPY and 10/2 TPY. We see no need for two separate lists where the chemical name and CAS # are noted twice, thereby increasing the factor for error and further lengthening the rule.

Based on our discussions with DAPC on the logic determinations behind the current compound tables, we propose the following changes:

- 1) Lower the threshold for removing chemicals from the 1 TPY list from compounds > 1,000,000 ug/m³ TLV to compounds > 100,000 ug/m³ TLV.
- 2) Remove from the 1 TPY list IRIS compounds that have an Air Risk Unit < 1X10⁻⁶ and/or RfC > 1,000, and add them to the 10/2 TPY list.

Under this proposal, 47 chemicals would be removed from the 1 TPY list; 46 would be added to the 10/2 TPY list (with 5 others coming off it due to corrected IRIS numbers); and there are 7 other chemicals that could either be removed from the 1 TPY list, or left on it and also added to the 10/2 TPY list. *Submitted with these comments is our working Excel spreadsheet, and working logic determination document that will further denote our current understanding of the draft rule and our proposed changes.*

Permit-by-rule

We would also like to comment on one aspect of the draft permit-by-rule (PBR) language out for interested party comment as part of OAC-3745-31-03. Our concern is in regard to the modification to the General Provisions paragraph in 3745-31-03(A)(4)(a) requiring annual exceedance reporting for PBRs. First and foremost, this language was not raised as a potential

modification to the rule during the permit-by-rule workgroup discussions. The Agency's addition of a significant rule requirement outside of the workgroup process undermines that process for all industry participants.

Second, the requirement will have a significant affect not only on the new PBRs proposed in the draft rule, but on all sources operating under a current PBR as well. Under the draft, OEPA would require all sources that have a PBR to begin annual exceedance reporting, when currently no reporting is required for these units. In addition, it seems contrary to the goals of establishing a new PBR (as in the case of gasoline dispensing facilities) to impose requirements that are not currently required under their existing permits.

We see no benefit to this requirement; instead it would a burden to everyone involved, including Ohio EPA who would be required to process hundreds of annual notifications (including "no deviation" reports) from these small sources, which is quite contrary to the goal of reducing Agency paperwork.

Thank you for the opportunity to provide these comments. We acknowledge that accomplishing the goals sought in this rule has posed a significant challenge to everyone involved. We look forward to continuing our dialogue.

Sincerely,



Kevin Kilroy
Smithers-Oasis
PET Industry Co-Chair



William Hayes
Vorys, Sater, Seymour and Pease
PET Industry Co-Chair



Kristin Clingan
Ohio Chamber of Commerce
PPEC Trade Association Representative

Enc.

Start with Koval 1 Toxics List Logic Determination (3/16/04)

Compounds proposed for **removal**:

compounds TLVs > 1,000,000 ug/m³

irritants only

asphyxiants only

irritants with anesthesia

irritants with anoxia

irritants with asthma sensitization

irritants with narcosis

irritants with narcosis plus liver, kidney, etc.. with TLVs $\geq 10,000$ ug/m³

irritants with a ceiling value only with ACGIH A4 ranking (A3's stay on list)

irritants with blood with a TLV $\geq 10,000$ ug/m³

irritants listed with CNS or blood with TLVs $\geq 10,000$ ug/m³

irritants listed with CNS & skin with TLVs $\geq 10,000$ ug/m³

irritants with liver¹, kidney with TLVs $\geq 10,000$ ug/m³

irritants listed with CNS, liver, kidney, or blood with TLVs $\geq 10,000$ ug/m³

irritants with a TLV $\geq 10,000$ ug/m³

(Suggest looking at non-irritants with various combinations of the above noted health effects)

compounds covered by other classes (ie. biphenyls)

decomposition products

Suggest compounds
TLVs $\geq 100,000$ ug/m³

Two that may require further thought:

compounds causing pneumoconiosis (fluid on the lungs)

compounds that are cholinergic (generally the pesticides)

Compounds proposed to **remain**:

HAPs that are not already on the Threshold Exemption or Super Toxics Tables

TLVs not separated out by other logic

All IRIS Compounds (suggest unless they have a TLV > 100,000 ug/m³ and Air Risk Unit < 1X10⁻⁶ and/or RfC > 1,000).

¹ Several Irritants with liver effects remain. They are: tetrachloronaphthalene (CAS# 01335-88-2); aminopyridine, 2- (CAS#00504-29-0); acetic anhydride (CAS#00108-24-7); and methyl isoamyl ketone (CAS# 00110-12-3).

Decisions applied for chemicals to be added to the **10/2 list**.

Must be on the 1 TPY list and

Must have TLV $\geq 15,000$ ug/m³ and

Must not have an IRIS number

(Suggest adding HAPs without listed TLV and also chemicals with IRIS Air Unit Risk $< 1 \times 10^{-6}$ and/or RfC ≥ 100 ug/m³).

Data Compiled to Assess Chemicals of Potential Public Health Concern for the Emissions Threshold Exemption Workgroup Consideration

A	B	D	D1	D2	D3	I	J	K	L	M	N	T	U	V
	CAS Number	USEPA HAP List X=On List	8-11-04 Ohio EPA CAS Number Needs To Be Corrected	8-11-04 Ohio EPA 10/1 TPY List	8-11-04 Ohio EPA 10/2 TPY LIST	2003 (w/ changes) ACGIH TWA (ug/m3 unless otherwise noted))	2003 (w changes) ACGIH TLV Basis; Dermatitis = dem.; Irritation = Irr.; Ceiling = C only	2003 ACGIH A1=Human A2=Suspect A3=Animal A4=Not Classifiable & Other Notations	US EPA IRIS A=Human B1=Probable B2=Probable Animal data C=Possible D=Not Classifiable Corrected 9-10-04	US EPA IRIS Air Unit Risk based on Inhalation Exposure 1/(ug/m3) Corrected 9-10-04	US EPA IRIS Reference Conc'n for Chronic Inhalation Exposure RTC (ug/m3) Corrected 9-10-04	US EPA IRIS A=Human B1=Probable B2=Probable Animal data C=Possible D=Not Classifiable	US EPA IRIS Air Unit Risk based on Inhalation Exposure (ug/m3)	US EPA IRIS Reference Conc'n for Chronic Inhalation Exposure RTC (ug/m3)
Carbon Monoxide (CO)	00630-08-0					28,640	reproductive; anoxia; CVS; CNS	BEI						
Nitrogen Oxide (NOx)	10102-44-0					9,409	irr.; pulmonary edema	A4						
Sulfur Dioxide (SO2)	07446-09-5	X				5,241	irr.	A4						
Particulate Matter (PM)														
Particulate Matter less than 10 microns in diameter (PM10)														
Organic Compounds (including VOC)														
Organic Compounds (per OAC 3745-21-07 (G)(2))														
Lead	07439-92-1	X				50	reproductive; CNS; blood; kidney;	A3; BEI	B2					
Any air contaminant listed in:														
paragraph (qq)(iii)(c)														
the 1.0 Ton Cpd Cut-off Table or														
the 10/2 Ton Cpd Cut-off Table & meet the portion emitted:														
from stack meeting criteria of criteria (qq)(iv)(a)&(c) and														
as non-stack emissions meeting criteria under (qq)(iv)(b)&(c)														
arsenic	07440-38-2	X				10	cancer skin; lung	A1; BEI	A	4.30E-03				
benzene - ? - this has a NESHAP - should it be here	00071-43-2	X				1,597	cancer	A1; BEI; skin	A	2.2E-06	30			
benzidine	00092-87-5	X				lowest	cancer (bladder)	A2	A	6.7E-02				
benzo(a)pyrene (B(a)P)	00050-32-8					lowest	cancer	A2	B2					
beryllium	07440-41-7	X				2	cancer (lung); berylliosis	A1	B1	2.4E-03	0.02			
cadmium	07440-43-9	X				10	kidney	A2; BEI	B1	1.8E-03				
chromium (Note different than chromium (VI) that's in 10/1 Table)	07440-47-3	X				50	cancer; irr.	A1						
hexachlorobenzene (HCB)	00118-74-1	X				2	liver; metabolic disorders	A3; skin	B2	4.6E-04				
mercury (& cpds) dropped - elemental & inorganic forms, as Hg	07439-97-6	X				25	reproductive; CNS; kidney	A4; BEI; skin	D		0.3			
nickel subsulfide, as Ni	12035-72-2					100	cancer; irr.; lung; derm.	A1	A	4.8E-04				
Polychlorinated dibenzo-p-Dioxins (Dioxins)														
Polychlorinated dibenzofurans (Furans)	00132-64-9	X												
polychlorinated biphenyls	01336-36-3	X							B2	1.0E-04				
vinyl chloride - ? - this has a NESHAP - should it be here	00075-01-4	X				2,566	cancer (liver)	A1	A	4.4E-06	100			
nitrogen dioxides														
cadmium compounds, as Cd (did combine under cadmium)	07440-43-9					2	kidney	A2; BEI						
mercury alkyl compounds, as Hg (did combine under mercury)	07439-97-6					10	CNS	skin						
mercury aryl compounds, as Hg (did combine under mercury)	07439-97-6					100	CNS; kidney; neuropathy; vision	skin						
acetamide	00060-35-5	X		Yes	Add									1
acetylaminofluorene, 2-	00053-96-3	X		Yes	Add									
allylamine	00107-11-9	X		Yes	Add									
carbonyl sulfide	00463-58-1	X		Yes	Add									

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	CAS Number	USEPA HAP List X=On List	8-11-04 Ohio EPA CAS Number Needs To Be Corrected	8-11-04 Ohio EPA 10/1 TYPY List	8-11-04 Ohio EPA 10/2 TYPY List	2003 (w/ changes) ACGIH TWA (ug/m3 unless otherwise noted))	2003 (w changes) ACGIH TLV Basis; Dermatitis = dem.; Irritation = irr.; Ceiling = C only	2003 ACGIH A1=Human A2=Suspect A3=Animal A4=Not Classifiable & Other Notations	US EPA IRIS A=Human B1=Probable B2=Probable Animal data C=Possible D=Not Classifiable Corrected 9-10-04	US EPA IRIS Air Unit Risk based on Inhalation Exposure 1/(ug/m3) Corrected 9-10-04	US EPA IRIS Reference Conc'n for Chronic Inhalation Exposure RFC (ug/m3) Corrected 9-10-04	US EPA IRIS A=Human B1=Probable B2=Probable Animal data C=Possible D=Not Classifiable	US EPA IRIS Air Unit Risk based on Inhalation Exposure (ug/m3)	US EPA IRIS Reference Conc'n for Chronic Inhalation Exposure RFC (ug/m3)
chloramben	00133-90-4	X		Yes	Add							B2	220	
chloroacetic acid	00079-11-8	X		Yes	Add							B2	1.2	1
chloro-1-propanol, 2- (with chloro-2-propanol (CAS#127-00-4))	00078-89-7			Yes	Add		reproductive; genotoxic	A4; skin						
chlorobenzilate	00510-15-6	X		Yes	Add							B2		
cresols / cresylic acid	01319-77-3	X	00107-13-2	Yes	Add									0.01
cyanides, free (IRIS) & compounds (HAP)	00057-12-5	X	00107-05-2	Yes	Add				D					
DDE	03547-04-4	X	03825-26-2	Yes	Add				D			D		0.05
dichlorobenzidene, 3,3-	00091-94-1	X	00075-25-3	Yes	Add							B2		
diethyl aniline n,n-	00121-69-7	X	02426-08-7	Yes	Add									
diethyl sulfate	00064-67-5	X	00109-79-6	Yes	Add							varies		
dimethoxybenzidine, 3,3- (dianisidine, ortho-)	00119-90-4	X	00133-06-3	Yes	Add							D		0.6
dimethyl aminoazobenzene, 4- (or para-)	00060-11-7	X	00063-25-3	Yes	Add									
dimethyl benzidine, 3,3-	00119-93-7	X	01333-86-5	Yes	Add									
dinitrophenol, 2,4-	00051-28-5	X	07790-91-3	Yes	Add							B2	3.2	
dinitrotoluene, 2,4-	00121-14-2	X	00078-89-8	Yes	Add							C	16	
ethyl carbamate (urethane)	00051-79-6	X	00075-05-10	Yes	Add									
ethylene dichloride (dichloroethane, 1,2-) remove ? 2nd CAS #			Drop a repeat 00107-13-3		Yes									
ethylene thiourea	00096-45-7	X		Yes	Add									5
ethylidene dichloride	00075-34-3	X		Yes	Add				C			D		
glycol ethers		X		Yes	Add									100
mineral fibers, fine		X		Yes	Add									
nitrophenyl, 4-	00092-93-3	X		Yes	Add									
nitrophenyl, 4-	00100-02-7	X		Yes	Add							B2		
nitrosomorpholine, n-	00059-89-2	X		Yes	Add									
nitroso-n-methylurea, n-	00684-93-5	X		Yes	Add							B2		
polymeric methylene diphenyl diisocyanate (PMDI)	09016-87-9	X		Yes	Add									
quinoline	00091-22-5	X		Yes	Add				B2					
styrene oxide	00096-09-3	X		Yes	Add									
tetrachlorodibenzo-p-dioxin, 2,3,7,8-	01746-01-6	X		Yes	Add							D		
titanium tetrachloride	07550-45-0	X		Yes	Add							D		
toluene-2,4-diamine	00095-80-7	X		Yes	Add							D		0.3
trichlorophenol, 2,4,6-	00095-85-4	X		Yes	Add									100
trimethylpentane, 2,2,4-	00540-84-1	X		Yes	Add									
bis(chloromethyl)ether (BCME)	00542-88-1	X		Yes	Add				A	6.2E-02		A	1200	0.8 to 10
diphenylhydrazine, 1,2-	00122-66-7	X	00542-88-2	Yes	Add				B2	2.2E-04		A	2.3x10-11/ml	
toxaphene	08001-35-2	X		Yes	Add				B2	3.2E-04		B2		
trichlorophenol, 2,4,6-	00095-85-4	X		Yes	Add				B2	3.1E-06				
trifluralin	01582-09-8	X		Yes	Add				C	2.2E-06(oral)		D		400
dibromo-3-chloropropane, 1,2- (DBCP)	00096-12-8	X	07803-52-3	Yes	Add						0.2			
epoxybutane, 1,2- (EBU)	00106-88-7	X	00079-04-10	Yes	Add						20	B2		
ethyl chloride (chloroethane)	00075-00-3	X	00098-86-4	Yes	Yes						10000	D		
hexamethylene-1,6-diisocyanate	00822-06-0	X		Yes	Add						0.01			0.02
methyl chloroform	00071-55-6	X		Yes	Yes	1,909,898	CNS; anesthesia	A4; BEI						
heptane, n- Ask why added back in	00142-82-5	Drop		Yes	or Add	1,639,264	irr.; narcosis		D			D		200
vinylidene fluoride	00075-38-7	Drop		Yes	Yes	1,309,611	liver	A4						
acetone	00067-64-1	Drop		Yes	or Add	1,187,117	irr.	A4; BEI						31406.3
dichloroethylene, cis-1,2-, all isomers	00193-59-2	Drop	00092-52-5	Yes	Yes	793,047	liver		D					
dichloroethylene, cis-1,2-, all isomers	00540-59-0	Drop	03033-62-4	Yes	Yes	793,047	liver					D		
methyl ethyl ketone (MEK)	00078-93-3	Drop	X	Yes	or Add	589,775	irr.; CNS				5000	D		400
stoddard solvent	08052-41-3			Yes	Yes	572,597	cancer (lung)	A2						

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ethyl benzene	00100-41-4	Drop	X	00067-64-3	Yes	or Add	542,740	irr.; CNS	A3; skin	D		1000			3
xylenes	01330-20-7		X		Yes	Yes	434,192	irr.	A4; BEI			100		C	
xylenes, meta-	00108-38-3		X		Yes	Yes	434,192	irr.	A4; BEI						
xylenes, ortho-	00095-47-6		X		Yes	Add	434,192	irr.	A4; BEI						200
xylenes, para-	00106-42-3		X		Yes	Yes	434,192	irr.	A4; BEI						
dichloroethane, 1,1-	00075-34-3	Drop		00098-07-8	Yes	Yes	404,785	irr.; liver; kidney	A4	C				C	
halothane	00151-67-7	Drop			Yes	Yes	403,661	CNS; liver	A4						
propylene dichloride (dichloropropane, 1,2-)	00078-87-5		X		Yes		346,595	irr.; CNS; liver; kidney	A4			4			
cyclohexane	00110-82-7	Drop		00107-11-10	Yes		344,213	CNS				6000			6000
chlorostyrene, o-	02039-87-4	Drop			Yes	Yes	283,436	neurotoxic; liver							
Zinc oxide	01314-13-2	Drop			Yes	Yes	281,000	metal fume fever							
trichloroethylene	00079-01-6		X		Yes	Yes	268,712	CNS; headache; liver	A5; BEI						
ethyl chloride (chloroethane)	00075-00-3	Drop		00053-96-5	Yes	or Add	263,885	liver; CNS	A3; skin						
methanol	00067-56-1		X		Yes	Yes	262,086	vision	skin; BEI						
cumene	00098-82-8		X	00309-00-3	Yes	Yes	245,787	irr.; CNS		D		400			
methyl styrene, alpha-	00098-83-9	Drop			Yes	Yes	241,677	irr.; dem.; CNS							
dioxolane, 1,3-	00646-06-0	Drop		00510-15-7	Yes	Yes	224,196	reproductive; blood							
methyl isobutyl ketone (MIBK)	00108-10-1		X		Yes	Yes	204,826	irr.; kidney	BEI			3000			
methyl methacrylate	00080-62-6				Yes	Add	204,765	irr.; dem.	SEN; A4	E		700		E	700
toluene	00108-88-3		X		Yes	Add	188,405	CNS	A4; skin; BEI	D		400			0.3
methyl tert-butyl ether (MTBE)	01634-04-4		X		Yes	Add	180,307	reproductive; kidney	A3			3000		B2	4
hexane, n-	00110-54-3		X		Yes	Yes	176,237	irr.; CNS; neuropathy	skin; BEI			200			20
dichloromethane (methylene chloride)	00075-09-2		X	10294-34-6	Yes	Yes	173,681	CNS; anoxia	A3; BEI	B2	4.7E-07			D	
hexene, 1-	00592-41-6	Drop			Yes	Yes	172,106	reproductive; CNS							
tetrachloroethylene (perchloroethylene)	00127-18-4		X		Yes	Yes	169,530	irr.; CNS	A3; BEI					D	
dichlorobenzene, 1,2-	00095-50-1	Drop		00056-55-4	Yes	Yes	150,317	irr.; liver	A4	D					
butyl glycidyl ether, n- (BGE)	02426-08-6	Drop			Yes	Yes	133,139	irr.; sensitization							
propyl nitrate, n-	00627-13-4	Drop			Yes	Yes	107,454	blood; cyanosis; anoxia	BEI2						
isopropoxyethanol, 2-	00109-59-1	Drop			Yes	Yes	106,493	blood	skin						
methyl chloride	00074-87-3		X		Yes		103,252	CNS	A4; skin	D		90			
ethylene glycol	00107-21-1		X	00124-04-11	Yes	Yes	100,000	irr.; C only	A4						
butoxyethanol, 2- (EGBE) (ethylene glycol monobutyl ether)	00111-78-2	Drop			Yes	or Add	96,663	irr.; CNS	A3	C		13000		C	13000
styrene, monomer	00100-42-5		X		Yes	Yes	85,202	neurotoxicity	A4; BEI			1000			
ethyl silicate	00078-10-4	Drop		00079-27-8	Yes	Yes	85,194	irr.; kidney							
amyl methyl ether, tert- (TAME)	00994-05-8	Drop			Yes	Yes	83,599	neurologic							
cyclohexane	00108-94-1	Drop		00092-67-2	Yes	Yes	80,278	irr.; CNS; liver; kidney	A3; skin					B2	3.1
dioxane 1,4- (1,4-dioxane)	00123-91-1		X	00108-90-8	Yes	Add	72,065	irr.; liver; kidney	A3; skin	B2					
benzyl acetate	00140-11-4	Drop			Yes	Yes	61,423	irr.; lung	A4						
trichloropropane, 1,2,3-	00096-18-4	Drop			Yes	Yes	60,299	liver; kidney	A3; skin						
dichlorobenzene (para), 1,4-	00108-46-7		X	17804-35-3	Yes	Yes	60,127	irr.; kidney	A3	C		800			
trichloroethane, 1,1,2-	00079-00-5		X		Yes	Yes ?	54,564	CNS; liver	A3; skin	C	1.6E-05				
naphthalene	00091-20-3		X		Yes	Yes ?	52,429	irr.; ocular; blood	A4; skin	C		3			
nitromethane	00075-52-5	Drop			Yes	Yes	49,930	thyroid	A3					C	1
acetophenone	00098-86-2		X		Yes	Add	49,141	irr.; ocular		D					

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chloroform	00067-66-3	X		Yes	Yes ?	48,826	reproductive; liver	A3	B2	2.3E-05				
chlorobenzene	00108-90-7	X		Yes	Add	46,037	cancer; liver	A3; BEI	D					10000
acetaldehyde	00075-07-0	X		Yes		45,041	irr.; C only	A3	B2	2.2E-09	9	B2	1300	
dichlorofluoromethane	00075-43-4	Drop	12179-04-4	Yes	Yes	42,094	liver							
ethylene dichloride (dichloroethane, 1,2-)	00107-06-2	X	00079-10-9	Yes	Yes	40,474	liver; narcosis	A4		2.6E-05		B2	26	
hydrogen chloride (anhydrous) (repeat)	07647-01-0			Yes		37,290	irr.; corrosion; C only	A4			20			20
trichlorobenzene, 1,2,4-	00120-82-1	X		Yes	Yes	37,108	irr.; C only		D					
nitropropane, 2-	00079-46-9	X		Yes		36,438	cancer; liver	A3			20			30
chloroprene, beta-	00126-99-8	X		Yes	Yes	36,213	reproductive; irr.; liver	skin						
dimethylacetamide, N,N-	00127-19-5		00056-23-6	Yes	Yes	35,632	reproductive; liver	A4; skin; BEI						
vinyl acetate	00108-05-4	X		Yes	Yes	35,211	irr.	A3			200	B2-C		
acetonitrile	00075-05-8	X		Yes		33,579	lung	A4; skin	D		60	B1	68	2
carbon tetrachloride	00056-23-5	X		Yes	Yes ?	31,460	cancer; liver	A2; skin	B2	1.5E-05				800
carbon disulfide	00075-15-0	X		Yes	Add	31,141	CVS; CNS	skin; BEI			700			
dimethylformamide, n,n-	00068-12-2	X	00120-80-10	Yes		29,894	liver	A4; skin; BEI			30	C	58	
dichloroethyl ether (Bis(2-chloroethyl)ether) (BCEE)	00111-44-4	X	01004-44-8	Yes	Yes ?	29,247	irr.; lung	A4; skin	B2	3.3E-04		D		
nitrogen trifluoride	07783-54-2	Drop		Yes	Yes	29,039	kidney	BEI2						
isophorone	00078-59-1	X		Yes	Yes	28,264	irr.; narcosis; C only	A3	C					
ethoxyethyl acetate (EGEEA)	00111-15-9	Drop	00075-07-2	Yes	Yes	27,027	reproductive	skin; BEI						
dimethylaniline (N,N-dimethylaniline)	00121-69-7	Drop	00353-50-5	Yes	Yes	24,781	anoxia; neurotoxicity	A4; skin; BEI1						
ethylidene norbornene	16219-75-3	Drop ?		Yes	Yes	24,589	reproductive; C only							
methoxyethyl acetate (EGMEA)	00110-49-6	Drop ?		Yes	Yes	24,157	reproductive; blood; CNS;	skin; BEI						
ethylmorpholine, N-	00100-74-3	Drop		Yes	Yes	23,554	irr.; ocular	skin						
catechol	00120-80-9	X		Yes	Yes	22,517	irr.; CNS; lung	A3; skin				B2		
ethyl bromide	00074-96-4	Drop	00075-86-7	Yes	Yes	22,286	liver; kidney; CVS	A3; skin						
cresol meta-	00108-39-4	X	00107-02-9	Yes	Yes	22,115	irr.; dermatitis; CNS	skin				C	22	
cresol ortho-	00095-48-7	X	00079-06-2	Yes	Yes	22,115	irr.; dermatitis; CNS	skin				C	4	
cresol para-	00106-44-5	X	00079-10-8	Yes	Yes	22,115	irr.; dermatitis; CNS	skin						
cresols, all isomers	01319-77-3	X	00124-04-10	Yes	Yes	22,115	irr.; dermatitis; CNS	skin				B2	4900	
ethyl tert-butyl ether (ETBE)	00637-92-3	Drop ?	00050-78-4	Yes	Yes	20,896	reproductive; irr.; lung function							
diisopropylamine	00108-18-9	Drop	02425-06-2	Yes	Yes	20,693	irr.; vision	skin						
methyl n-butyl ketone	00591-78-6	Drop		Yes	Yes	20,483	neuropathy	skin; BEI						
ethyl acrylate	00140-88-5	X	00060-35-7	Yes	Add	20,472	irr.; sensitization	A4				B2	0.47	
vinylidene chloride	00075-35-4	X		Yes	Yes	19,826	CNS; liver; kidney	A4						7
phenol	00108-95-2	X		Yes	Yes	19,245	irr.; CNS; blood	A4; skin; BEI	D					
ethoxyethanol, 2- (EGEE)	00110-80-5		00110-80-5	Yes	Yes	18,429	reproductive				200			200
formamide	00075-12-7	Drop		Yes	Yes	18,421	irr.; liver	skin						
ammonia (anhydrous)	07664-41-7			Yes	Add	17,413	irr.				100			100
pyridine	00110-86-1	Drop		Yes	or Add	16,176	irr.; CNS; liver; kidney; blood							
methoxyethanol, 2- (EGME)	00109-86-4			Yes		15,580	reproductive; blood; CNS	skin; BEI			20			20

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acetylene tetrabromide	00079-27-6	Drop		Yes		14,139	irr.; lung							
hydrogen sulfide	07783-08-4			Yes		13,926	irr.; CNS				2			1
methyl iodide (iodomethane)	00074-88-4		X	Yes		11,611	irr.; CNS	skin						
nitrotoluene, all isomers	00088-72-2	Drop		Yes		11,217	anoxia; cyanosis	skin; BEI2						
nitrotoluene, all isomers	00099-08-1	Drop		Yes		11,217	anoxia; cyanosis	skin; BEI2						
nitrotoluene, all isomers	00099-99-0	Drop		Yes		11,217	anoxia; cyanosis	skin; BEI2						
isopropylaniline, N-	00768-52-5	Drop		Yes		11,060	blood	skin; BEI2						
boron tribromide	10294-34-5	Drop		Yes		10,248	irr.; burns; C only							
chloro-1-nitropropane, 1-	00600-25-9	Drop		Yes		10,106	irr.; liver; lung							
benomyl	17804-35-2			Yes		10,000	reproductive; derm.; irr.	A4						
bromacil	00314-40-9	Drop		Yes		10,000		A3						
D 2,4-, salts and esters	00094-75-7		X	07664-41-8	Yes	10,000	irr.	A4						
dicyclopentadienyl iron	00102-54-5	Drop		00106-99-1	Yes	10,000	blood; liver							
diphenylamine	00122-39-4	Drop		00067-66-4	Yes	10,000	liver; kidney; blood	A4						
magnesite	00546-93-0	Drop		Yes		10,000	irr.; pneumoconiosis							
magnesium oxide	01309-48-4			Yes		10,000	irr; metal fume fever	A4						
methoxychlor	00072-43-5		X	Yes		10,000	CNS; liver	A4	D					
nitrapyrin	01828-82-4	Drop		Yes		10,000	liver	A4						
picloram	01918-02-1	Drop		Yes		10,000	liver; kidney	A4						
terephthalic acid	00100-21-0	Drop		Yes		10,000	lung; urinary							
thiobis(6-tert-butyl-m-cresol), 4,4'-	00096-69-5	Drop		Yes		10,000	liver; kidney	A4						
hexachloroethane	00067-72-1		X	Yes		9,683	irr.; liver; kidney	A3; skin	C	4.0E-06		D	60	60
iodoform	00075-47-8			Yes		9,663	kidney							
diethylaminoethanol	00100-37-8			00098-51-2	Yes	9,586	irr.; CNS	skin						
adiponitrile	00111-69-3			Yes		8,643	lung	skin	D			D		
toluidine, m-	00108-44-1			Yes		8,765	anoxia; kidney	A4; skin; BEI2						
toluidine, o-	00095-53-4		X	Yes		8,765	anoxia; kidney	A3; skin; BEI2				B2		4
toluidine, p-	00106-49-0			Yes		8,765	anoxia; kidney	A3; skin; BEI2						
tetrafluoroethylene	00116-14-3			Yes		8,196	kidney; liver	A3						
aniline	00062-53-3		X	Yes		7,618	anoxia	A3; BEI; skin	B2		1			
tetrachloroethane, 1,1,2,2-	00079-34-5		X	Yes		6,865	liver; CNS; GI	A3; skin	C	5.8E-05			C	
trichloroacetic acid	00076-03-9			Yes		6,683	irr.	A3	C				C	
methyl silicate	00681-84-5			Yes		6,226	ocular; lung							
butyl toluene, p-tert-glycidol	00098-51-1			Yes		6,061	irr.; CNS; CVS							
glycidol	00556-52-5			Yes		6,060	irr.; neoplasia	A3						
phthalic anhydride	00085-44-9		X	Yes		6,058	irr.	SEN; A4						
acrylic acid	00078-10-7		X	Yes		5,894	reproductive; irr.	A4; skin			1	A	620	
carbonyl fluoride	00353-50-4			Yes		5,400	irr.; bone; fluorosis							
benzyl chloride	01004-44-7		X	Yes		5,177	irr.; lung	A3	B2			A		
bromoform	00075-25-2		X	Yes		5,170	irr.; liver	A3; skin	B2	1.10E-06				
nitric acid (80% or greater)	07697-37-2			Yes		5,155	pulmonary edema							
nitrobenzene	00098-95-3		X	Yes		5,035	anoxia	A3; skin; BEI	D					

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acetone cyanohydrin, as CN	00075-86-5			Yes		5,000	CNS; anoxia; C only	skin						
acetylsalicylic acid (aspirin)	00050-78-2			Yes		5,000	blood							
adipic acid	00124-04-9			Yes		5,000	irr.; neurotoxicity; GI;							
captan	00133-06-2	X		Yes		5,000	irr.	SEN; A3						0.2
carbaryl	00063-25-2	X		Yes		5,000	cholinergic	A4				D		
Di (2-ethylhexyl) phthalate (DEHP)	00117-81-7	X	00090-04-1	Yes		5,000	irr.	A3	B2			D (inhale)		90
dibutyl phthalate	00084-74-2	X	07803-52-3	Yes		5,000	reproductive; irr.		D					3000
dimethylphthalate	00131-11-3	X	00079-11-9	Yes		5,000	irr.		D					400
dinitolide	00148-01-6		00057-74-10	Yes		5,000	irr.; liver	A4						
ethylhexanoic acid	00149-57-6			Yes		5,000	reproductive							
hydrogen cyanide salts, as CN	00592-01-8			Yes		5,000	lung; thyroid; C only	skin			3			
methoxyphenol, 4-	00150-76-5			Yes		5,000	depigmentation							
metribuzin	21087-64-9			Yes		5,000	blood; liver	A4	D			D		
phenothiazine	00092-84-2			Yes		5,000	kidney	skin						
pindone	00083-26-1			Yes		5,000	bleeding; dermat.							
piperazine dihydrochloride	00142-64-3			Yes		5,000	irr.; burns; asthma; sensitization							
pyrethrum	08003-34-7			Yes		5,000	sensitization	A4						
rotenone (commercial)	00083-79-4			Yes		5,000	irr.; CNS	A4						
sulfometuron methyl	74222-97-2			Yes		5,000	irr.; blood	A4						
tantalum & tantalum oxide (1314-61-0) dusts, as Ta	07440-25-7			Yes		5,000	irr.; lung							
tantalum (7440-25-7) & tantalum oxide dusts, as Ta	01314-61-0			Yes		5,000	irr.; lung							
trichloronaphthalene	01321-65-9			Yes		5,000	liver	skin						
triethanolamine	00102-71-6			Yes		5,000	irr.; liver; kidney							
hydrogenated terphenyls (nonirradiated)	61788-32-7			Yes		4,928	irr.; liver							
propylene oxide	00075-56-9	X		Yes		4,751	cancer (nasal); irr.	A3; SEN	B2	3.7E-06	30			3000
propylenimine (methyl aziridine, 2-)	00075-55-8	X		Yes		4,670	irr.; CNS	A3; skin						
allyl glycidyl ether (age)	00106-92-3			Yes		4,668	sensitization	A4						
dichloropropene, 1,3- (technical grade)	00542-75-6	X	00314-40-10	Yes		4,539	irr.	A3; skin	B2	4.0E-06	0.02			20
butadiene, 1,3-	00106-99-0	X		Yes		4,425	cancer	A2	likely	3.0E-05	2	A	620	
acrylonitrile	00107-13-1	X		Yes		4,339	cancer	A3; skin	B1	6.8E-05	2	B2	1.1	
diethylene triamine	00111-40-0		13765-19-1	Yes		4,220	irr.; sensitization	skin						
isobutyl nitrite	00542-56-3			Yes		4,218	anoxia; blood; C only	A3; BEI2						
triethylamine	00121-44-8	X		Yes		4,139	irr.; vision	A4; skin			7			
carbon tetrabromide	00558-13-4			Yes		4,069	irr.; liver							
methyl bromide	00074-83-9	X		Yes		3,883	irr.	A4; skin						
chloro-2-propanol, 1- & chloro-1-propanol, 2- (CAS# 78-89-7)	00127-00-4			Yes		3,867	genotoxic	A4; skin						
dibutylaminoethanol, 2-n-	00102-81-8		07784-42-2	Yes		3,544	irr.; cholinergic	skin; BEI1						
carbon black	01333-86-4			Yes		3,500	lung	A4						
ethylene chlorohydrin	00107-07-3		00107-02-10	Yes		3,293	CVS; CNS; C only	A4; skin						
allyl chloride	00107-05-1	X		Yes		3,129	liver	A3	C		1	A	30	2
molybdenum metal & insoluble compounds, as Mo	07439-98-7			Yes		3,000	CNS; lung							
nitroaniline, para-	00100-01-6			Yes		3,000	anoxia; anemia; liver	A4; skin; BEI2						
triphenyl phosphate	00115-86-6			Yes		3,000	irr.; dermat.	A4						
tetramethyl succinonitrile	03333-52-6			Yes		2,785	CNS	skin						
methyl acrylonitrile	00126-98-7			Yes		2,744	irr.; CNS	skin						
fluorides, as F				Yes		2,500	irr.; bone; fluorosis	A4; BEI						
xylydine (mixed isomers)	01300-73-8			Yes		2,478	cancer; genotoxic	A3; skin; BEI1						
hydrogen fluoride, as F	07864-39-3			Yes		2,455	fluorosis; C only	BEI						
propargyl alcohol	00107-19-7			Yes		2,293	irr.; liver; kidney							

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methyl aniline, N-	00100-61-8			Yes		2,191	anoxia; blood	skin; BEI2						
vinyl bromide	00593-60-2	X		Yes		2,187	cancer; liver, CNS	A2	B2		3			
tributyl phosphate	00126-73-8			Yes		2,178	irr.; cholinergic	BEI1						
dimethylethoxysilane	14857-34-2		00463-58-2	Yes		2,131	irr.; headaches							
diethanolamine	00111-42-2	X	01189-85-2	Yes		2,000	liver, kidney; liver	skin						
disulfiram	00097-77-8		00107-30-3	Yes		2,000	CNS; GI	A4						
hydroquinone	00123-31-9	X		Yes		2,000	CNS; ocular; derm.	A3						700
tetrachloronaphthalene	01335-88-2			Yes		2,000	liver							
tin metal, as Sn	07440-31-5			Yes		2,000	stannosis							
tin oxide & inorganics, except tin hydride, as Sn	07440-31-5			Yes		2,000	stannosis							
epichlorohydrin	00106-89-8	X	02039-87-5	Yes		1,892	irr.; liver; kidney	A3; skin	B2	1.2E-06	1	B2		
vinyl fluoride	00076-02-5			Yes		1,883	cancer; liver	A2						
aminopyridine, 2-	00504-29-0			Yes		1,863	CNS							
butyl mercaptan, n-	00109-79-5			Yes		1,844	CNS							
ethylene oxide	00075-21-8	X	00107-05-3	Yes		1,802	cancer; reproductive	A2				D		
iron pentacarbonyl	13463-40-6			Yes		1,602	edema							
tetryl	00479-45-8			Yes		1,500	sensitization							
propionactone, beta-chlorine	00057-57-8	X		Yes		1,474	irr.	A3						
hydrogen peroxide	07782-50-5	X		Yes		1,450	irr.	A4						
bromine	07722-84-1			Yes		1,391	edema							
dinitrobenzene, meta-	00099-65-0		08001-35-3	Yes		1,031	anoxia; neurotoxicity	skin; BEI2	D			D		
dinitrobenzene, ortho-	00528-29-0		07782-50-6	Yes		1,031	anoxia; neurotoxicity	skin; BEI2	D			D		
dinitrobenzene	00100-25-4		00127-00-5	Yes		1,031	anoxia; neurotoxicity	skin; BEI2	D			D		
dinitrobenzene	25154-54-5		00532-27-5	Yes		1,031	anoxia; neurotoxicity	skin; BEI2	D			D		
borates, tetra, sodium salts, pentahydrate	12179-04-3			Yes		1,000	irr.; GI; metal fume fever							
copper dusts and mists, as Cu	07440-50-8		00079-27-7	Yes		1,000	seizures; liver	A3	B2	9.7E-05		B2	0.97	
dichlorodiphenyl trichloroethane, p,p'- (DDT)	00050-29-3		00205-99-3	Yes		1,000	seizures; liver	A3	B2	9.7E-05		B2	0.97	
malathion	00121-75-5			Yes		1,000	cholinergic	A4; skin; BEI1						
oxalic acid	00144-62-7			Yes		1,000	irr.; burns							
phosphoric acid	07664-38-2			Yes		1,000	irr.				10			10
sulfuric acid (mists)	07664-93-9			Yes		1,000	cancer (larynx); irr.	A2						
tungsten, as W soluble compounds	07440-33-7			Yes		1,000	irr.; CNS							
yttrium, as Y & compounds	01300-73-8			Yes		1,000	fibrosis							
Zinc chloride fume	07646-85-7			Yes		1,000	irr.; lung edema							
methyl mercaptan	00074-93-1			Yes		984	irr.; CNS							
biphenyl, 1,1-	00092-52-4	X		Yes		946	lung		D					
ethylene imine (aziridine)	00151-56-4	X	00309-00-4	Yes		881	irr.; bronchitis	A3; skin						
ethylenimine	00151-56-4	X		Yes		881	irr.; bronchitis	A3; skin	D			D		
crotonaldehyde	04170-30-3		00111-69-4	Yes		860	irr.; C only	A3; skin						
ketene	00483-51-4			Yes		860	lung irr.; lung edema							
methylene dianiline, 4,4-	00101-77-9	X		Yes		811	liver					B2		
benzotrithionide	00098-07-7	X		Yes		800	cancer; irr.; C only	A2; skin	B2			B2	23	
perchloromethyl mercaptan	00594-42-3			Yes		760	irr.; pulmonary edema							

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chloropicrin	00076-08-2			Yes		672	irr.; lung	A4						
nitrochlorobenzene, para-	00100-00-5			Yes		644	anoxia; blood; liver	A3; skin; BEI2						
phosphorous oxychloride	10025-87-3			Yes		627	irr.; kidney							
germanium tetrahydride	07782-65-2			Yes		627	blood							
vinyl-1-cyclohexene dioxide, 4-diglycidyl ether (DGE)	00106-87-6			Yes		573	reproductive; irr.; dem.	A3; skin						
dimethyl sulfate	00077-78-1	X	00156-62-8	Yes		532	blood	A4						
antimony hydride	07803-52-3		00558-13-5	Yes		516	irr.	A3; skin	B2					
antimony trioxide	07803-52-3			Yes		510	irr.; blood				0.2			
anisidine, ortho-	00090-04-0	X		Yes		500	anoxia	A3; BEI2; skin					100	0.70
anisidine, para-	00104-94-9			Yes		500	anoxia	A4; BEI2; skin						
antimony compounds, as Sb+A4	00774-38-0	X		Yes		500	irr.; lung; CVS							0.03
barium & compounds, as Ba	07440-39-3			Yes		500	irr.; GI; muscles	A4	D			D		
calcium cyanamide	00156-62-7	X		Yes		500	irr.; dem.	A4						
chlordane	00057-74-9	X		Yes		500		A3	B2	1.0E-04	0.7			20
chlorinated camphene	08001-35-2			Yes		500	seizures; liver	A4; skin						
cyclonite	00121-82-4		00061-82-6	Yes		500	irr.; CNS; liver; blood	A4; skin						
hafnium & compounds, as Hf	07440-58-6			Yes		500	irr.; liver							
lindane (all isomers)	00058-89-9	X		Yes		500	CNS; liver	A3; skin						
methyl demeton	08022-00-2			Yes		500	irr.; cholinergic	skin; BEI1						
molybdenum soluble compounds, as Mo	07439-98-7			Yes		500	irr.; lung	A3						
pentachloronitrobenzene	00082-68-8	X		Yes		500	liver	A4						
pentachlorophenol	00087-86-5	X		Yes		500	CVS; CNS	A3; skin; BEI	B2					
propoxur	00114-26-1	X		Yes		500	cholinergic	A3; BEI1						5000
nitroglycerin (NG)	00055-63-0			Yes		464	CVS							
chloropropionic acid, 2-	00598-78-7			Yes		444	reproductive; irr.	skin						
vinyl cyclohexene, 4-	00100-40-3			Yes		442	CNS	A3						
phenylhydrazine	00100-63-0			Yes		442	dem.; anemia	A3; skin						
quinone	00106-51-4	X		Yes		442	blood					C		3
phosphine	07803-51-2	X		Yes		417	irr.; CNS; GI		D		0.3			200
phosgene	00075-44-5	X		Yes		405	edema					E		0.2
maleic anhydride	00108-31-6	X		Yes		401	irr.; asthma	SEN; A4						
selenium hexafluoride	07783-79-1			Yes		395	pulmonary edema							
dichloroacetylene	07572-29-4		07440-39-4	Yes		388	C only	A3						
chlorine trifluoride	07790-91-2			Yes		378	irr.; lung; C only							
formaldehyde (gas)	00050-00-0	X		Yes		368	cancer; irr.; C only	A2; SEN	B1	1.3E-05				100
nickel carbonyl	13463-39-3			Yes		349	irr.; CNS		B2			B2		
diazomethane	00334-88-3	X	00104-94-10	Yes		344	cancer (lung); irr.	A2						

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propylene glycol dinitrate	06423-43-4			Yes		340	CNS; anoxia	skin; BEI2						
bis (2-dimethylaminoethyl) ether	03033-82-3			Yes		328	irr.; vision	skin						
chloroacetophenone, 2-ethylene glycol dinitrate (EGDN)	00532-27-4 00628-98-6	X		Yes	00111-69-5	316 311	irr.; sensitization CVS	A4 skin			0.03	D		1000
sodium azide dropped - as hydrazoic acid vapor	28628-22-8			Yes		293	CNS; CVS; lung; C only	A4						
sodium azide combined once dropped - as Sodium azide	28628-22-8			Yes		290	CNS; CVS; lung; C only	A4						
chlorine dioxide	10049-04-4			Yes		276	irr.; bronchitis		D		0.2	D		0.2
decaborane	17702-41-9		00994-05-9	Yes		250	CNS; lung function	skin						
aldrin	00309-00-2			Yes		250	liver	A3; skin	B2	4.9E-03		B2	4900	
dieldrin	00060-57-1		00111-76-3	Yes		250	CNS; liver	A4; skin	B2	4.6E-03		B2	4600	
chloroacetyl chloride	00079-04-9			Yes		231	irr.; lung	skin						
acrolein	00107-02-8	X		Yes		229	only	A4; skin			0.02	B2		1
vinyl-2-pyrrolidone, n-	00088-12-0			Yes		227	liver; ototoxicity	A3						
phenylphosphine	00638-21-1			Yes		225	reproductive; irr.; dem.; blood; C only							
hexachlorobutadiene	00087-88-3	X		Yes		213	irr.; kidney	A3; skin	C	2.2E-05		B2	2.2	9
amitrole	00061-82-5			Yes		200	reproductive; thyroid irr.; GI; metal fume fever	A3						
copper fume	07440-50-8		00050-78-3	Yes		200			D			D		
dinitro-o-cresol, 4,6-, & salts	00534-52-1	X	10049-04-5	Yes		200	metabolic disorders	skin						
dinitrotoluene, 2,4,2,6- (mixture)	25321-14-8		00600-25-10	Yes		200	reproductive; CVS	A3; skin; BEI2	B2					
hexafluoroacetone	00684-18-2			Yes		200	reproductive; kidney	skin						
hexamethylene diisocyanate	00822-06-0			Yes		200	irr.; sensitization				0.01			
manganese & inorganic compounds, as Mn	07439-96-5	X		Yes		200	(Mn); lung	varies	D		0.05			
methylcyclopentadienyl manganese tricarbonyl, as Mn	12108-13-3			Yes		200	CNS; liver; kidney	skin						
selenium & compounds, as Se	07782-49-2	X		Yes		200	irr.		D					
uranium, as U soluble & insoluble compounds	07440-61-1			Yes		200	cancer; kidney; blood	A1						
hydrogen selenide	07783-07-5			Yes		166	irr.; GI							
arsine	07784-42-1			Yes		159	blood; kidney				0.05			0.05
chromyl chloride	14977-61-8		00060-35-6	Yes		158	kidney; liver; respiratory							
lead arsenate, as Pb3(AsO4)2	03687-31-8			Yes		150	reproductive; CNS; anemia; kidney	BEI						
strychnine	00057-24-9			Yes		150	CNS							
tetramethyl lead, as Pb	00075-74-1			Yes		150	CNS	skin						
diborane	19287-45-7		00774-36-1	Yes		113	CNS; lung function							
hexachlorocyclopentadiene	00077-47-4	X		Yes		112	irr.; pulmonary edema	A4	E		0.2			

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methylene bis(2-chloroaniline), 4,4- (MBOCA; MOCA)	00101-14-4	X		Yes		109	cancer (bladder); kidney, anoxia	A2; skin; BE1				B2		0.50
ammonium perfluorooctanoate	03825-26-1			Yes		100	liver	A3; skin						
butyl chromate, tert-, as CrO3	01189-85-1			Yes		100	irr.; lung; C only	skin						
captafol	02425-06-1			Yes		100	derm.; sensitization	A4; skin						
cobalt carbonyl, as Co	10210-68-1		00075-05-9	Yes		100	lung edema							
cobalt hydrocarbonyl, as Co	16842-03-8		00098-66-3	Yes		100	lung edema							
dichlorvos (DDVP)	00062-73-7	X	07726-95-7	Yes		100	cholinergic	SEN; A4; BE1; skin	B2		0.5	B2	14	
endosulfan	00115-29-7		00076-06-3	Yes		100	liver; CNS	A4; skin						
endrin	00072-20-8		00126-99-9	Yes		100	liver; CNS	A4; skin	D			D		
enflurane	13838-16-9		00598-78-8	Yes		100	CNS; CVS	A4						
indium & compounds, as In	07440-74-6			Yes		100	edema							
manganese cyclopentadienyl tricarbonyl	12079-65-1			Yes		100	CNS; pulmonary edema	skin						
octachloronaphthalene	02234-13-1			Yes		100	liver; derm.	skin						
paraquat	04685-14-7			Yes		100	irr.; lung		C					
phenylenediamine, meta-	00108-45-2			Yes		100	irr.; liver	A4						
phenylenediamine, ortho-	00095-54-5			Yes		100	irr.; liver; blood	A3						
phenylenediamine, para-	00106-50-3	X		Yes		100	sensitization; skin; eye	A4						
phosphorous (yellow)	12185-10-3			Yes		100	GI							
picric acid	00088-89-1			Yes		100	irr.; derm.; ocular; sensitization							
tellurium & compounds, as Te excluding hydrogen telluride	13494-80-9			Yes		100	CNS; cyanosis; liver							
tetraethyl lead, as Pb	00078-00-2			Yes		100	CNS	A4; skin						
thallium & soluble compounds, as Tl	07440-28-0			Yes		100	irr.; CNS; CVS	skin						
tin organic compounds, as Sn	07440-31-5			Yes		100	immunotoxicity	A4; skin						
trinitrotoluene, 2,4,6- (TNT)	00118-96-7			Yes		100	irr.; liver; blood; ocular	skin; BE12	C			C		
triorthocresyl phosphate	00078-30-8			Yes		100	CNS; cholinergic	A4; skin; BE1						
warfarin	00081-81-2			Yes		100	blood; bleeding							
xylene x, x' -diamine, m-	01477-55-0			Yes		100	irr.; blood; C only	skin						
perfluorobutylene	00382-21-8			Yes		82	irr.; pulmonary edema; C only							
cyanogen chloride	00506-77-4		00106-92-4	Yes		75	only							
methylene bis(4-cyclohexylisocyanate)	05124-30-1			Yes		54	sensitization; irr.							
methylene diphenyl diisocyanate (monomeric MDI)	00101-68-8	X		Yes		51	sensitization		D		0.6			
chromium (VI) compounds (Maybe this should be in Super Toxics & Chromium here)	18540-29-9	X	00075-07-1	Yes		50			A	1.2E-02	0.1	B1	13	
demeton	08065-48-3		00062-53-4	Yes		50	cholinergic	skin; BE1						
heptachlor	00076-44-8	X		Yes		50	CNS; liver; blood	A3; skin	B2	1.3E-03				100
heptachlor epoxide	01024-57-3	X		Yes		50	CNS; liver; blood	A3; skin	B2	2.6E-03				100
lead chromate, as Pb	07758-97-6			Yes		50	cancer; reproductive; CVS	A2; BE1						
parathion	00056-38-2	X		Yes		50	cholinergic	A4; skin; BE1	C					

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sodium fluoroacetate	00062-74-8			Yes		50	CNS; CVS	skin						
triglycidyl-s-triazinetriene, 1,3,5-methyl isocyanate	02451-82-9			Yes		50	blood; sensitization							
methyl isocyanate	00624-83-9	X		Yes		47	sensitization	skin						
isophorone diisocyanate	04098-71-9			Yes		45	derm.; asthma; sensitization							
trimellitic anhydride	00552-30-7			Yes		40	immun.; sensitization; C only							
acrylamide	00079-06-1	X		Yes		30	CNS; derm.	A3; skin	B2	1.3E-03				
dichloro-2-butene, 1,4-	00764-41-0		01332-21-5	Yes		26	cancer; irr.	A2; skin						
dimethylhydrazine, 1,1-	00057-14-7	X	00133-90-5	Yes		25	irr.; neoplasia	A3; skin						
cobalt (& cobalt compounds), as Co	07440-48-4	X	00075-86-6	Yes		20	asthma; lung; CVS	A3; BEI				B2	1300	
methyl hydrazine	00060-34-4	X		Yes		19	irr.; liver	A3; skin				D		
hydrazine / hydrazine sulfate	00302-01-2	X		Yes		13	irr.; liver	A3; skin	B2	4.9E-03				
pentaborane	19824-22-7			Yes		13	CNS							
lead chromate, as Cr	07758-97-6			Yes		12	CVS	A2						
rhodium soluble compounds, as Rh	07440-16-6			Yes		10	irr.							
Zinc chromates, as Cr	11103-86-9			Yes		10	cancer (lung)	A1						
Zinc chromates, as Cr	13530-85-9			Yes		10	cancer (lung)	A1						
Zinc chromates, as Cr	37300-23-5			Yes		10	cancer (lung)	A1						
chloromethyl ether, bis	00542-88-1			Yes		5	cancer (lung)	A1	A	6.2E-02				
toluene-2,4-diisocyanate (TDI)	00584-84-9	X		Yes		4	irr.; sensitization	A4			0.07			
osmium tetroxide	20816-12-0			Yes		2	irr.; vision							
calcium chromate, as Cr	13785-19-0			Yes		1	cancer	A2						
strontium chromate, as Cr	07782-06-2			Yes		1	cancer (lung)	A2						
subtilisins, as crystalline active enzyme	09014-01-1					0.05	irr.; lung; sensitization; C only							
dichloroethylene, cis-1,2-, all isomers	00156-60-5		00542-88-2	Yes	Yes	0	liver					D		
ethylene dibromide	00106-93-4	X	00079-06-3	Yes		none	irr.; liver; kidney	A3; skin						
hexamethyl phosphoramide	00680-31-9	X		Yes		none	lung	A3; skin						
tolidine, o-	00119-93-7			Yes		none	liver; kidney; blood	A3; skin						
aminodiphenyl, 4-	00092-67-1	X		Yes		lowest	cancer bladder	A1; skin				B2	15	
benz(a)anthracene (see PAH)	00056-55-3			Yes		lowest	cancer	A2	B2			B2		
benzo(b)fluoranthene (see PAH)	00205-99-2			Yes		lowest	cancer	A2	B2			B2		
chloromethyl methyl ether (CMME)	00107-30-2	X		Yes		lowest	cancer (lung); irr.	A2	A			B1		
chrysene	00218-01-9		00067-64-2	Yes		lowest	irr.	A3	B2			B2		
dichlorobenzidine, 3,3'	00091-94-1		00140-11-5	Yes		lowest	irr.; derm.	A3; skin	B2					
dimethyl carbamoyl chloride	00079-44-7	X	00075-15-1	Yes		lowest	cancer (lung)	A2				B2	3.7	30
naphthylamine, 2- or 6-	00091-59-8			Yes		lowest	cancer (bladder)	A1						
nitrodiphenyl, 4-	00092-93-3			Yes		lowest	cancer (bladder)	A2; skin						
nitrosodimethylamine, n-	00062-75-9	X		Yes		lowest	liver	A3; skin	B2	1.4E-02				
propane sulfone, 1,3-	01120-71-4	X		Yes		lowest		A3	D			D		

From: <Chris_Korleski@ham.honda.com>
To: <rick.carleski@epa.state.oh.us>
Date: 10/13/04 9:30AM
Subject: Honda Comments on Proposed 31-03 Revisions, etc.

Rick:

Thanks for all the effort and the opportunity to comment. I attach Honda's comments on the IP version of the contemplated revisions to 31-03 and the general permits.

Any Qs, or if you need more info, please let me know.

Thanks.

Chris

CC: <Jennifer.Nichols@epa.state.oh.us>, <mike.hopkins@epa.state.oh.us>, <bob.hodanbosi@epa.state.oh.us>

**Comments of
Honda of America Mfg., Inc.
on
DAPC's Interested Party Proposals Relating to:

Permanent PTI Exemptions

Permits-by-Rule; and

General Permits**

October 13, 2004

Submitted by Chris Korleski, Counsel

I. General Comments on Emission Threshold Proposal:

Honda first wishes to commend both DAPC and the industry representatives of the PPEC who worked so diligently to try and come up with concepts and language acceptable to both parties. Honda strongly endorses the emission threshold concept as a way of reducing the degree of regulatory oversight applicable to those small sources which have very limited, if any, impact on the quality of the ambient air. Honda endorses this concept not simply because it makes so much sense from a resource consumption standpoint, but also because it will, to some degree, make permitting burdens in Ohio more consistent with permitting burdens in other states, thus furthering the oft-stated goal of a "level playing field" for Ohio industry.

From a substantive standpoint however, Honda does have some significant concerns with the current emission threshold proposal, as follows:

- **Complexity:** While Honda may be able to take advantage of the rule due to the expertise of the personnel in our environmental department, the proposal seems so complex that Honda wonders whether smaller companies, who do not have significant environmental resources, will be able to comprehend the exemption and take advantage of it. If the rule is overly complex, it will defeat the purpose of the exemption and prevent both companies and Ohio EPA from taking advantage of the

intended efficiency benefits. Further, Honda believes that it is the smaller companies that are more likely to have such smaller and potentially exempt sources, and fears that an overly-complex rule will prevent those companies that might theoretically have the most to gain from the exemption from taking advantage of it. Honda will defer to the comments of smaller businesses and their proponents as to whether or not this proposal will truly provide the intended relief.

- **Notification:** The degree of notification and reporting is substantial enough that, in some circumstances, getting a PTI may actually be easier than taking advantage of the exemption. For example, the notification requirement [in 31-01(qq)(vi)(g)] requires a listing of all state and federal rules that apply to the source, while a PTI application requires no such information. Honda suggests that this portion of the notification requirement be deleted.
- **Administrative Penalty:** Honda notes that in no other DAPC stationary source rule has OEPA ever tried to impose an automatic penalty provision, and Honda does not believe such a provision is either appropriate or necessary. Such a rule greatly limits OEPA's ability to apply appropriate enforcement discretion, and eliminates the state's ability to apply its normal enforcement mechanisms, including applicable penalty policies, etc. Such a rule also fails to take into account any mitigating circumstances which should be (and normally are) considered in the enforcement and negotiation process. Simply stated, this rule proposal automatically puts both parties in an inflexible "box", while Honda believes the enforcement of rules should continue to occur via the existing (and flexible) mechanisms.
- **Toxics Regulation:** The rule attempts to embody as law (and, presumably, "applicable requirements", OEPA's longstanding MAGLC policy.

II. Specific Comments on Proposed Revisions to Permanent Exemptions [31-03(A)(1)]:

- A. **Addition of Vehicle Dynamometer Exemption:** In October of 2003, as a result of discussions between auto manufacturers and Ohio EPA that were triggered by the decision in *Honda of America Mfg., Inc. v. Jones* (ERAC Case No. 80475), OEPA sent a letter to all auto manufacturers stating it would incorporate a PTI exemption for auto assembly line dynamometer operations into 3745-31-03.

Honda requests that the upcoming revision of 31-03 include this change, and suggests the following language for the exemption:

- (qq) point or fugitive venting of exhaust emissions from newly-manufactured vehicles operated within or adjacent to the vehicle manufacturing facility prior to final shipment, including, but not limited to, exhaust emissions from completed vehicles leaving the vehicle assembly line and moving throughout the plant, exhaust emissions generated at vehicle dynamometers, roll tests, and other vehicle testing stations, and exhaust emissions generated on facility test tracks.

This will clarify once and for all the inapplicability of the PTI requirement to emissions of the type litigated in *Honda of America Mfg., Inc. v. Jones* and similar types of emissions that have historically not been subject to PTI requirements.

B. Proposed Comment in 31-03(A):

While Honda believes it understands the intent of the comment, the proposed language is, in Honda's view, somewhat confusing and unwieldy. Honda proposes:

... and obtain a permit to install. ~~They do not~~ By themselves, however, the exemptions set forth below do not relieve the permittee from any applicable ~~the~~ requirement of including to include the emissions associated with the exempt sources ~~into any new major new source review permitting action~~ when determining whether a stationary source or group of stationary sources constitutes a major stationary source, or whether a modification of a stationary source or group of stationary sources constitutes a major modification.

C. 31-03(A)(1): Introductory Language

Honda asks Ohio EPA to confirm its interpretation that tanks exempted from NSPS applicability under 40 CFR 60.110b(b) are exempt from the document retention requirements of 40 CFR 60.116b(b).

D. Storage Tanks [31-03(A)(1)(I)(iii)]:

DAPC is proposing to delete the present exemptions applicable to tanks containing less than 700 gallons and tanks of less than 10,000 gallons storing certain kinds of organic liquids. Instead DAPC is proposing to allow an exemption for organic liquid storage tanks that are either:

less than 19,815 gallons in capacity and using submerged fill; or

between 19,815 and 39,894 gallons in capacity, containing low VP organics, and using submerged fill; or

greater than 151 cubic meters in capacity and containing very low VP organics.

This proposal converts OEPA's storage tank exemptions to something akin to those found in the NSPS provisions in 40 CFR Subpart Kb, but is even more restrictive, as it imposes a requirement not found in the NSPS rule, *i.e.*, that submerged fill be used in order for the tank to be exempt.

While Honda supports the proposed changes, Honda also believes Ohio EPA should retain without modification the existing present exemption for very small tanks (*i.e.*, < 700 gallons). Honda does not understand why a long-standing exemption for small tanks from **minor** source permitting should be eliminated. Presumably, at some point in time, DAPC made a determination that tanks less than 700 gallons in volume were such a minor emission source that they could be exempt from Ohio's minor new source permitting program. There is nothing in the rule synopsis or elsewhere to suggest that DAPC has changed its mind on this issue. Honda urges DAPC to retain the 700 gallon exemption limit, especially in light of DAPC's stated goal of improving permit process efficiency by entirely excluding small sources from the permitting regime. To now require the permitting of such small tanks seems inconsistent with that goal.

E. 31-03(A)(1)(qq): Emission Threshold Exemption

31-01(J): Definition of "Air Contaminant Source Project":

Honda finds the definition confusing in several respects and suggests the following:

“...means, for the purposes of paragraph 3745-31-03(A)(1)(qq) of the Administrative Code, **the installation and/or modification of one or more air contaminant sources**, each with an...of the Administrative Code, associated with a discrete production goal or objective where installation **and/or modification** is scheduled...”

(A)(1)(qq)(iii)(a) and (b): Organic compounds (including VOCs) and “organic materials qualifying under rule 3745-21-07(G)(2)” are regulated by this PTI exemption, and have different thresholds. What is the difference between these two pollutants? Can OEPA further define “organic materials qualifying under rule 3745-21-07(G)(2)”? Is OEPA intending to regulate photochemically reactive organic compounds subject to 3745-21-07 differently than other organic compounds? Can OEPA give an example of a material that is defined as “organic materials qualifying under rule 3745-21-07(G)(2)”?

Since there is an ongoing discussion of major changes to 3745-21-07, Honda suggests removal of the reference to “organic materials qualifying under rule 3745-21-07(G)(2)” and suggests OEPA simply regulate “organic compounds” with this PTI exemption.

(A)(1)(qq)(iii)(c) states:

Sources of the chemical compound that have been reduced as part of the project may be counted as a reduction in the summation if the egress parameters of the new or modified air contaminant sources are similar or better...than the egress parameters of the air contaminant sources with reduced emissions.

Can OEPA explain exactly what exactly this means? Can OEPA please give an example?

(A)(1)(qq)(iii)(d) and (e): These rules limit emissions of particular chemical compounds. What is the basis for the limits?

Flowchart: Based on the rule text and flow chart, Honda raises the following scenario:

A source that has a PTE of 4 TPY of acetone and 5 TPY of MEK. Honda conducts the following analysis:

- (a) PTE/actuals < column B threshold? Yes.
- (b) Project emissions < column C threshold? Yes.

- (c) Compounds on IRIS/Great Lakes table? No.
- (d) PTE <1 TPY for each HAP? No.
- (e) Acetone or MEK on 10/2 Table? No.

Based on the rule, Honda would conclude that it could not take advantage of the exemption under these circumstances. However, the flow chart indicates Honda could. Honda assumes the flow chart is erroneous?

(A)(1)(qq)(iii)(c), (d), & (e): This approach to air toxics is far more complex than the current modeling approach used in PTI applications. For example, the PTI application typically includes a Screen model for "air toxics" with greater than 1 ton per year emissions to demonstrate that the model result is below the maximum 1-hr ground level concentration (MAGLC). Air toxics with emissions of less than 1 ton per year did not have to be considered. Under the proposed exemption, the ability to model emissions goes away and emissions greater than 1 tpy from the chemicals listed in paragraph (qq)(xi) exclude the project from using the exemption. OEPA provides an option in paragraph (iii)(e) for greater than 1 ton per year project emissions from listed chemicals in the table located in paragraph (qq)(xii). However, only a select number of chemicals are listed for this option.

How did OEPA develop these two tables? As just one example, acetone has a TLV of 1,187 mg/m³ and vinyl acetate has a TLV of 35.2 mg/m³ (ACGIH 2004 TLVs and BEIs handbook). Both chemicals appear in the 1.0 tpy cut-off list, but only vinyl acetate appears in the 10/2 table. So, a project that will emit acetone (a less toxic material according to industrial hygiene literature) cannot emit more than 1.0 ton per year. Yet, a project with vinyl acetate emissions (a more toxic material) can emit up to 10 tons per year of stack emissions as long as the project conforms to the stack height requirements in the proposed exemption. As illustrated in this example, Honda is unclear how the permitting burden on industry and OEPA will be relieved through this rule when the proposed rule forces a project emitting less toxic materials at levels above 1.0 TPY to apply for a traditional permit to install.

If OEPA is concerned with managing air toxics within the threshold exemption, then Honda proposes that the rule uses the same modeling criteria used within the current PTI application process.

(A)(1)(qq)(iv)(a): How was the required stack height determined? In addition, is the unobstructed stack height of 1.5 times the

building height measured from the ground or from the top of the building? It is unclear to Honda whether the language “from ground level elevation” applies only to the minimum of 32.8 feet or if it also applies to the 1.5 times building height. If it does not apply to the former, then it would essentially require the permittee to have their stack at GEP height ($H + 1.5L$). It would be rare to have a stack at that height, especially for such small sources.

(A)(1)(qq)(iv)(c): Can OEPA please explain what “with no nearby terrain greater than 50% of the release height” means? Can OEPA please give an example?

(A)(1)(qq)(vi): OEPA references the use of a “standard OEPA form”. What is the name of this form and where can it be located?

(A)(1)(qq)(viii): Will the director be notifying the permittee in writing, [as in proposed rule 31-03(A)(4)(j)(iv)(a)], when it has made its final determination whether a PTI can be revoked and the Emission Threshold PTI Exemption can apply? If yes, Honda requests that the language be clarified similar to 31-03(A)(4)(j)(iv)(a). [As an alternative approach, please see comment on 31-03(A)(1)(qq) and (A)(4)(j)(iv)(a), below.]

(A)(1)(qq)(xi): The table lists glycol ethers as a category. Within both the MACT and SARA programs, glycol ethers are defined by the glycol ethers guidance document issued to support the SARA TRI reports. If OEPA intends the regulated community to use the same guidance within the threshold exemption rule then that intent should be clarified in the rule.

(A)(1)(qq)(viii) and (A)(4)(j)(iv)(a): Both the Emission Threshold Exemption and Permit By Rules require the director to give approval to revoke a PTI in order for a facility to start using one of the PTI exemptions for an existing permitted source. It also appears that the permittee must wait for official notification from OEPA of this PTI revocation approval (prior to no longer abiding by the terms and conditions of the PTI). From previous experience, Honda has requested revocation of PTIs but has never received any confirmation from OEPA when and if these requests were processed. Does OEPA now have a system in place to send out these revocation letters? Honda suggests that the language be modified that once the request to revoke the PTI is submitted, the permittee can assume the PTI has been revoked within x amount of days (i.e., 30 days) if OEPA has not denied the request within that timeframe. This will lighten the burden on OEPA for sending out

approvals for PTI revocation letters, since it appears this is not currently being done.

III. Permits by Rule [31-03(A)(4)]:

A. General Provisions

(A)(4)(a)(ii)(b) requires an annual report of deviations for all permit-by-rule exemptions. This requirement is duplicative for Title V facilities. In other words, all of the PBR sources must be listed on the Title V permit and any deviation of applicable requirements must already be identified quarterly, semi-annually and annually. Can OEPA modify this language to require the annual report for non-Title V facilities only and clarify that the Title V facilities will identify their deviations on their annual Title V certification?

(A)(4)(a)(ii)(b): The annual reports are required by January 31st of each year. Honda requests that this date be modified to April 15th of each year. The April 15th date is consistent with the due dates of the Annual Fee Emission Report and the PTI required annual reports for sources less than 1 ton per year that are not reported on the FER.

(A)(4)(a)(ii)(b): Honda believes that given the small size of and/or low emissions these sources, and given OEPA's rightful desire to minimize paperwork, the requirement to submit "no deviation" reports should be deleted.

- B. (A)(4)(b): Emergency Generators:** From previous discussions with OEPA, Honda was informed that emergency generators cannot use this PTI exemption if the generator is used to supply power during peak demand periods (*i.e.*, peak shaving), unless it is the electrical company's decision to curtail power at that facility. In other words, peak shaving is not considered an emergency by OEPA and therefore, this PTI exemption could not be used for emergency generators that are also used for peak shaving. If this continues to be OEPA's interpretation, Honda requests that the PBR exemption be clarified to further explain this interpretation (or define emergency generator) to ensure consistent permitting throughout the state of Ohio.

In addition, Honda has previously raised the issue to OEPA that based on available manufacturers' data, most older emergency generators cannot meet the 17-11(B)(5)(b) particulate matter limit

regulations. Honda believes this rule change may be an opportunity to consider this discrepancy.

C. Boiler and Process Heaters: 31-01(M) & 31-03(A)(4)(j)]

(A)(4)(j)(i)(b): The proposed rule limits the exemption to boilers, etc., "capable of burning only natural gas". Does this include boilers which have the physical capability to burn fuel oil, but which are not supplied with fuel oil? Honda suggests that the language in (A)(4)(j)(i)(b) be revised to read "the unit burns only natural gas".

(A)(4)(j)(i)(d): Honda requests that the language results in be modified to not allow emissions greater than 0.051 lbs NO_x per MMBtu of heat input, instead of 0.050 lbs/MMBtu. US EPA's AP-42 emission factor in table 1.4-1 for boilers less than 100 MMBtu/hr with low NO_x burners is 50 lbs No_x/10⁶ scf, and using a conversion factor of 1,020 scf MMBtu (as suggested in table 1.4-1) results in emissions of 0.051 lbs NO_x per MMBtu, higher than the rule's proposed limit.

(A)(4)(j)(ii)(a): Should the requirements for opacity allow an exception for startup and shutdown conditions, as provided in 17-07?

(A)(4)(j)(iv)(a): See earlier comments on permit revocation process on pages 6 and 7.

IV: General Permits:

Honda has looked at the general permits for boilers and has the following questions and comments:

With regard to question 4 of the Draft MGP Information Document, can Ohio EPA give an example of a "multiple source-specific requirement"?

With regard to question 5 of the Draft MGP Information Document, is Honda correct in assuming that the fact that an NSPS rule (i.e., Subpart Dc) requires certain tracking of fuel use (as opposed to imposing emission standards) at a boiler does not prevent that boiler from taking advantage of a boiler general permit?

On the Draft MGP Information Document there are only 9 criteria, not 12.

End Comments

From: "McWilliams, Douglas" <DMcWilliams@ssd.com>
To: "Rick Carleski" <rick.carleski@epa.state.oh.us>
Date: 10/13/04 5:29PM
Subject: Ohio Steel Group Comments on the Permit Exemption ThresholdRule

Rick,

The Ohio Steel Group has prepared the attached comments as interested parties to the Permit Exemption Threshold and Permit By Rule changes to OAC rule 3745-31. Please consider these comments as you evaluate changes to the rule before it is formally proposed.

<<Ohio Steel Group Threshold Exemption Comment.pdf>> <<Ohio Steel Group Threshold Exemption Comment Letter.doc>>

I have attached both a word document and a signed .pdf version for your convenience. If you would like a hardcopy for any reason, please let me know.

Call me if you have any questions.

Thank you.

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October 13, 2004

VIA ELECTRONIC MAIL

Richard J. Carleski, P.E.
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: The Ohio Steel Group's Comments Regarding Ohio EPA's Proposed
Emissions
Threshold Exemption and Permit-By-Rule Provisions

Dear Mr. Carleski:

On behalf of the Ohio Steel Group, an industry association of steel manufacturers each doing business in Ohio which includes AK Steel Company, International Steel Group, Inc., The Timken Company, United States Steel, Lorain Tubular Products Division, Lorain Pipe Mills and WCI Steel Company, we provide these comments on the Ohio EPA's proposed revisions to OAC rule 3745-31-03. The Ohio EPA initially requested comment on this rulemaking by September 13, 2004, but then extended this deadline to **October 13, 2004**. Accordingly, these comments are timely.

I. EMISSIONS THRESHOLD EXEMPTION

The Ohio Steel Group strongly supports an emissions threshold exemption from Ohio's permit to install ("PTI") process. This exemption would allow numerous small projects with minimal environmental impacts to proceed outside of the PTI process. Excluding these small sources from the PTI process will create much needed operational flexibility by eliminating the associated expense and delay of permitting. Exempting small projects from the PTI process will also benefit those who continue to seek PTIs for larger projects by allowing Ohio EPA to more appropriately allocate its limited administrative resources. Specifically, Ohio EPA will be able to

Richard J. Carleski, P.E.

October 13, 2004

Page 2

SQUIRE, SANDERS & DEMPSEY L.L.P.

dedicate its attention to more environmentally significant PTI applications and thus will be able to increase the speed and efficiency of the PTI process as a whole.

While the creation of an emissions threshold exemption has great potential, the unnecessary complexity of the current proposal threatens to greatly diminish its utility. The current scheme would create an unwieldy multi-tiered system that is difficult to comprehend, even with Ohio EPA's detailed, two-page flow chart. The proposed steps to qualify for an exemption would include determining whether: (1) the source is subject to any NESHAP, NSPS or MACT standard, (2) any permit-by-rule or permanent exemption applies, (3) each contaminant source meets the threshold levels for CO, NO_x, SO₂, PM, PM₁₀, OC, OM and Lead, (4) the project as a whole meets the separate threshold levels for CO, NO_x, SO₂, PM, PM₁₀, OC, OM and Lead, (5) the project emits less than the number of pounds per year of the 14 chemicals listed on table 3745-31-03(qq)(iii)(c), (6) the project would emit less than 1 ton per year of each of 420 discrete compounds, and, if needed, (7) the project would emit less than 10 tons of stack emissions and 2 tons of fugitive emissions of 37 compounds (upon meeting certain additional criteria).

Most regulated entities will be unable or unwilling to invest the resources to make the significant effort necessary to discern whether their project satisfies this maze of prerequisites. Instead, they will likely continue applying for PTIs despite the exemption. Ohio EPA's laudable goals of increased permitting efficiency and operational flexibility can only be fully realized if it adopts a simple, user-friendly exemption scheme. The following changes are recommended to help simplify the proposed emission threshold exemption rule to increase its effectiveness:

1. Use the federal Hazardous Air Pollutant (HAP) list instead of the "Compound Cut-Off" Tables listed in (xi) and (xii). The HAP list in the Clean Air Act is an established list of 180+ compounds adopted by Congress with clear mechanisms for revision by USEPA to provide a uniform nationwide basis for protecting human health from toxic air contaminants. The regulated community has used this list for 14 years (since the 1990 Clean Air Act Amendments) to identify applicability with the Part 63 MACT standards. As a result, Ohio sources have gained some familiarity with the HAP compounds that are associated with the emissions units they operate. Ohio is asking that we evaluate potential emissions of another 240 compounds that have no statutory or regulatory basis before we can qualify for a permit exemption. As proposed, the rule requires far more of the smallest sources seeking an exemption than would be required of the largest sources obtaining a permit. Using the HAP list will remove a significant obstacle to the practical application of this exemption.

2. Establish simple and clear exemption thresholds for HAPs. The Table in (iii)(c) of the proposed rule contains annual limits for 14 compounds. Many of those limits are so low that they cannot be reasonably ascertained through available measurement techniques. For instance, the "chromium" limit is set at 0.69 pounds per year. Chromium is a naturally occurring element in rocks and soils that is used in the steelmaking process with other elements to harden steel. Chromium III is an essential nutrient that naturally occurs in food. Like many other compounds in this Table, it is ubiquitous in the environment, which interferes with attempts to measure its concentration from a particular emissions unit. Also, the Agency for Toxic Substances and Disease Registry (ATSDR) reports that only Chromium VI (hexavalent chromium) has been identified as a human carcinogen, which is not the form of chromium that is found in rocks and

used in the steelmaking process. The Ohio Steel Group objects to the inclusion of chromium and other naturally occurring elements on this Table at levels that cannot be reliably measured. With this Table, the threshold exemption rule cannot be used without assuming the unreasonable risk that these elements will be found at level that, when projected over a full year, yield annual emission rates in excess of the values in Table (iii)(c).

The Ohio legislature set one ton of HAP per year as the threshold below which Ohio EPA cannot regulate an emissions unit. See OAC 3745-15-05. USEPA set its threshold for major source regulation at 10 tons per year for any individual HAP (including chromium) and 25 tpy for all HAP combined. The threshold to avoid permitting in Ohio should be somewhere in between these thresholds without the complexities of evaluating stack height and distance to the fence line. See OAC 3745-31-03(qq)(xii). The Ohio Steel Group proposes a simple exemption level of 5 tpy for any single HAP and 10 tpy for all compounds combined. This is well below the major source threshold that triggers federal MACT requirements (10/25 tpy respectively). If additional control is warranted for a particular air contaminant, Ohio EPA should regulate it through the rulemaking process instead of using the case-by-case regulation of the permit system.

3. **Use common terms with accepted definitions to establish the emissions thresholds.** The proposed rule introduces the term “total uncontrolled potential to emit,” which unnecessarily complicates the applicability determination. As currently proposed, source level emissions can be determined by either the “total uncontrolled potential to emit or actual emissions...” (OAC 3745-31-03(qq)(iii)(a)), and project level emissions are measured by reference to “uncontrolled PTE” (OAC 3745-31-03(qq)(iii)(b)), and the compounds in Table (iii)(c) are to be evaluated using “controlled potential to emit.” “Potential to emit” (PTE) is a concept with a long history that is fairly well understood. Adding the terms “uncontrolled” and “controlled” to PTE raises questions as to what constitutes control. For instance, are control measures under OAC 3745-17-08 RACM requirements considered controls for this exemption? Are storage tanks with pressure relief valves controlled? What about submerged fill pipes? A better approach would use “potential to emit” or actual emissions to qualify for the emission threshold exemption. A source choosing to use actual emissions would have continuing recordkeeping obligations to demonstrate that emissions remained below the threshold consistent with paragraph (v), while a source using potential to emit would be able to rely on a one-time calculation of the potential emissions for the project.

4. **Ohio EPA should streamline the information that those claiming the threshold exemption must submit.** The rule currently requires the submission of both “uncontrolled potential to emit *and* expected actual emissions for each pollutant emitted from each air contaminant source...” OAC rule 3745-31-03(qq)(vi)(f). As operators have the *option* of selecting either PTE or actual emissions to qualify for this exemption (see (qq)(iii)(a)), only information associated with the selected method should be required.

5. **The rule should specify what constitutes reasonable inquiry into the potential emissions of compounds of concern.** The proposed rule does not specify the proper scope of inquiry for sources seeking to determine whether the threshold exemption applies, particularly as

it pertains to the long list of compounds of concern. Ohio EPA should establish a simple standard inquiry that allows facilities to rely on MSDS or Product Data Sheets for material content and published emissions factors for determining whether HAP compounds are emitted and at what levels. Facilities completing this inquiry in good faith and with reasonable diligence should then be protected from administrative and civil penalties by a "safe harbor" provision. Establishing a clear standard of inquiry and allowing facilities to rely on it will greatly reduce the burden of uncertainty on small sources while strongly encouraging the appropriate use of the threshold exemption.

II. PERMIT-BY-RULE PROPOSALS

Ohio Steel Group also strongly supports the proposed expansion of Ohio's permit-by-rule program. These new permits-by-rule will help to free up Ohio EPA's administrative resources for processing more complex PTI applications. This will appropriately result in greater responsiveness to the operating demands of the regulated community and the increased protection of the environment.

Please contact me if you would like to discuss any of these comments in greater detail.

Sincerely,

Douglas A. McWilliams

cc: Karen A. Winters, Esq.
Ohio Steel Group Representatives

From: "Jack Pounds" <jpounds@ohiochemistry.org>
To: <rick.carleski@epa.state.oh.us>
Date: 9/20/04 2:01PM
Subject: Comments on Proposed Permit by Rule Provisions for Gasoline Dispensing Units

Dear Rick:

We have reviewed the proposed revisions to 3745-31-03 incorporating the permit-by-rule provisions for gasoline dispensing facility Stage I and Stage II Vapor Recovery. The provisions in sections 3745-31-03(A)(4)(h) and (A)(4)(i) are consistent with the discussions and agreement as part of the Permit-by-Rule Workgroup activities. However, the modification to the General Provisions paragraph in 3745-31-03(A)(4)(a) was not raised as a potential modification to the rule during permit-by-rule discussions and will have a significant effect on potential use of the Permit-by-Rule process. In particular, paragraphs 3745-31-03(A)(4)(a)(ii)(b) and (4)(a)(iv) impose requirements that are not currently required under the existing permits. While our membership does not include gasoline dispensing facilities, we are concerned with the implications attendant to other emissions sources to be covered by Permits-by-Rule.

The Ohio Chemistry Technology Council is opposed to these changes.

We believe they represent an unnecessary burden on both the industry and the agency. While the agency will be eliminating a periodic permit renewal it will be adding the need to process hundreds of annual notifications. In addition, the annual notification requirement will require hundreds of business to submit an annual report that simply says that nothing has changed. This is contrary to the purpose of reducing agency paperwork that was one of the key objectives of the Permit Process Efficiency Committee process. In addition, paragraph 3745-31-03(A)(4)(a)(iv) may inadvertently apply maintenance and reporting provisions that are not currently required under the existing permits.

Sincerely,

Jack R. Pounds
President

Ohio Chemistry Technology Council

CC: "Terry Fleming (E-mail)" <flemingt@api.org>, "Kristin Clingan"
<kclingan@ohiochamber.com>, <raugsberger@oma.com>, "Chris Elsner" <celsner@ohiochemistry.org>,
<broderick.sp@pg.com>

From: "Jim Rocco" <jrocco@sagerisk.com>
To: "Rick Carleski" <rick.carleski@epa.state.oh.us>
Date: 9/7/04 12:24PM
Subject: Proposed Permit-by-Rule for GDF

Rick,

I have reviewed the proposed revisions to 3745-31-03 incorporating the permit-by-rule provisions for gasoline dispensing facility Stage I and Stage II Vapor Recovery. The provisions in sections 3745-31-03(A)(4)(h) and (A)(4)(i) are consistent with our discussions and agreement as part of the Permit-by-Rule Workgroup activities. However, the modification to the General Provisions paragraph in 3745-31-03(A)(4)(a) was not raised as a potential modification to the rule during our permit-by-rule discussions and will have a significant effect on the gasoline dispensing facility (GDF) permit-by-rule requirements. In particular, paragraphs 3745-31-03(A)(4)(a)(ii)(b) and (4)(a)(iv) impose requirements that are not currently required under the existing permits.

The Ohio Petroleum Marketers and Convenience Store Association and the Ohio Petroleum Council are opposed to these changes and their application to the GDF.

The existing provisions of 3745-21-09 (R) or (DDD) and the proposed GDF permit-by-rule provisions in 3745-31-03(A)(4)(h) and (A)(4)(i) adequately address the reporting, recordkeeping and maintenance requirements for these facilities. Paragraph 3745-31-03(A)(4)(a)(ii)(b) imposes annual reporting requirements that are not required under the current stage I or stage II permits. This is an unnecessary burden on both the industry and the agency. While the agency will be eliminating a periodic permit renewal it will be adding the need to process hundreds of annual notifications. In addition, the annual notification requirement will require hundreds of small business to submit an annual report that simply says that nothing has changed. This is contrary to the purpose of reducing agency paperwork. In addition, paragraph 3745-31-03(A)(4)(a)(iv) may inadvertently apply maintenance and reporting provisions that are not currently required under the existing permits. While there may be an argument that this paragraph does not apply to the GDF, its presence and reference opens that possibility.

It is unclear why the modifications were made to the General Provisions in 3745-31-03(A)(4)(a). However, we do not believe that they should apply to GDF facilities. It is our recommendation that these modifications be deleted. If some or all of the proposed modified general provision language has a specific application to a particular source, than the appropriate language should be inserted into the exemption language for that source. At minimum, if these provisions are to remain, than a specific exemption from complying with these general provisions should be inserted into 3745-31-03(A)(4)(h) and (A)(4)(i). Language can be added as

3745-31-03(A)(4)(h)(v)(e) and 3745-31-03 (A)(4)(i)(v)(f) such as:

"An owner or operator of a facility operating under this permit-by-rule is exempt for paragraphs (A) (4)(a)(ii)(b) and (A) (4)(a)(iv) of this rule."

I have appreciated the opportunity to work with you on this issue. We look forward to working with you and the agency to resolve this issue.

If you have any questions, or would like additional information, please feel free to contact me.

Jim

James R. Rocco

Sage Risk Solutions LLC

360 Heritage Road

Aurora, Ohio 44202

Phone: (330) 562-9391

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STATEMENT OF CONFIDENTIALITY:

The information contained in this electronic message and any attachments are intended for the exclusive use of the addressees and may contain confidential or privileged information. If you are not the intended recipient, please notify Jim Rocco immediately at (330) 562-9391 and destroy all copies of this message and any attachments.

CC: "Terry Fleming" <fleming@api.org>, "Jennifer Rhoads" <jrhoads@opmca.org>

From: "Scott Compton" <scott@asaohio.org>
To: <rick.carleski@epa.state.oh.us>
Date: 10/11/04 3:12PM
Subject: Comments on OAC Rule 3745-31-03

October 11, 2004

Attn: Rick Carleski, P.E.

Ohio EPA , Division of Air Pollution Control

Subject: Comments to the record on Proposed OAC amendments to 3745-31-03.

On behalf of the 600 members of the Automotive Service Association (ASA) of Ohio, Inc. please submit for the record, our support for the proposed amendments to Ohio Administrative Code (OAC) rule 3745-31-03 to incorporate six new permit by rule exemptions. Specifically, we support the permit by rule exemption as proposed in OAC 3745-31-03 (A)(4)(g) for Auto Body Refinishing Facilities.

ASA of Ohio supports Ohio EPA's common sense approach to regulating small emission sources, such as auto body refinishing spray booths. The proposed rules will help reduce the regulatory burden currently borne by small businesses throughout Ohio, yet will not have an adverse effect on the environment. As we have stated during the PBR working group meetings, legitimate collision repair shops already comply with the requirements stipulated in the permit by rule proposal.

ASA of Ohio appreciates the due diligence Ohio EPA has shown throughout the PBR development process.

Respectfully Submitted by

Scott Compton
Executive Director
ASA of Ohio, Inc.

800-441-6518

740-548-5746 fax

From: "Cheryl Dunn" <cdunn@pianko.org>
To: "Rick Carleski" <rick.carleski@epa.state.oh.us>
Date: Fri, Sep 10, 2004 4:38 PM
Subject: Please see the attached letter. Please contact me if you have any problems with the attached.

Please see the attached letter. Please contact me if you have any problems with the attached.

Thank you,
Cheryl Dunn
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CC: <GaryJGATF@aol.com>, <Marcik@sgia.org>, <dmonteleone@flexography.org>, "John Jaymont" <jjaymont@pianko.org>

September 8, 2004

Richard J. Carleski, P.E.
Ohio Environmental Protection Agency, DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

OH EPA LTR 0904.doc

Re: Comments on draft amendments to OAC rule 3745-31

Dear Mr. Carleski:

This letter is in response to the request for comments on the August 2004 Permit by Rule (PBR) proposal. Thank you for the opportunity to review and comment on the proposed amendments to OAC rule 3745-31-03. The rule, once finalized, will provide a significant amount of administrative burden reduction, while maintaining or improving environmental protection. The proposed transition for a printer qualifying as either a small or midsize facility with an existing Permit to Install or Operate is seamless and efficient. The printing industry fully supports this PBR approach.

In reviewing the August 2004 DPAC proposal, there were a few conditions that need to be addressed. The comments are divided into the categories of general, small printer, and midsize printer requirements.

General

1. It is not clear what the relationship is between the exemption for ink jet printers found at 3745-31-03 (A) (1) (x) and this proposal as it pertains to digital printing operations. Since digital printers employ the use of ink jet printing devices, does this mean that those units would be exempt from the PBR proposal?

Small Printer Requirements [OAC 3745-31-03 (4)(k)]

1. Please revise the Qualifications Section, (i)(c)(ii) by deleting the 1,000 gallon threshold and replacing it with a 1,500 gallon threshold as this provides for more operational flexibility while ensuring that the applicable OAC 3745-21-07 limits are not exceeded.
2. We understand that the rule governing the use of photochemically reactive materials (OAC 3745-21-07) is in the process of being revised to the point that if finalized, would render the OAC 3745-21-07 requirements in the proposal for small and midsize printers in OAC 3745-31-03 (4)(k) moot. It is anticipated that once this rule is finalized, as proposed, changes will be made to this proposal eliminating all references to photochemically reactive materials and their compliance requirements.

If for some reason, this does not occur revisions to the recordkeeping requirements are needed. The following is the suggested revision for both the small and midsize printer categories:

(iii) Monitoring and/or Record Keeping Requirements.

- (a) If photochemically reactive materials are employed in non-flexographic presses at the facility, the owner or operator of the printing facility shall maintain the annual records described in paragraph (A)(4)(k)(iii)(c) **for nonphotochemically reactive materials as well as daily records for each photochemically reactive material based on the monthly records required in paragraph (iii)(c) and assignment of usage production records (e.g., hours of operation, impressions, etc)** which list the following information for each graphic arts material (ink, fountain solution additives, clean-up solvents, etc.) employed in each printing line:

The comments submitted by PAINKO on OAC 3745-21-07 addressed the significant administrative burden driven by the daily recordkeeping requirements that are imposed as a result of this rule. Daily recordkeeping has also been a topic of discussion with U.S. EPA and the agency has concluded that daily recordkeeping for printing operations is not appropriate. U.S. EPA will address this issue in the soon to be released Technical Support Document for Title V Permitting of Printing Operations.

3. Miscellaneous Requirements (vi)(a) – It is not clear why this provision was included. Since this PBR is setting a facility-wide limit and the limits are at or less than 50 percent of the major source threshold, this provision as written should be revised to reflect that compliance with this PBR ensures that the facility will not be a major source. The only federal requirement that cannot be waived would be for any area source MACT standards that could be eventually developed and imposed.

Midsize Printer Requirements [OAC 3745-31-03 (4)(l)]

1. Please revise the Qualifications Section, (i)(c)(ii) by deleting the 1,800 gallon threshold and replacing it with a 1,900 gallon threshold as this provides for more operational flexibility while ensuring that the applicable OAC 3745-21-07 limits are not exceeded.
2. We understand that the rule governing the use of photochemically reactive materials (OAC 3745-21-07) is in the process of being revised to the point that if finalized, would render the OAC 3745-21-07 requirements in the proposal for small and midsize printers in OAC 3745-31-03 (4)(l) moot. It is anticipated that once this rule is finalized, as proposed, changes will be made to this proposal eliminating all references to photochemically reactive materials and their compliance requirements.

If for some reason, this does not occur revisions to the recordkeeping requirements are needed. The following is the suggested revision for both the small and midsize printer categories:

(iii) Monitoring and/or Record Keeping Requirements.

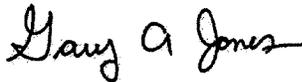
- (a) If photochemically reactive materials are employed in non-flexographic presses at the facility, the owner or operator of the printing facility shall maintain the annual records described in paragraph (A)(4)(k)(iii)(c) **for nonphotochemically reactive materials as well as daily records for each photochemically reactive material based on the monthly records required in paragraph (iii)(c) and assignment of usage production records (e.g., hours of**

operation, impressions, etc) which list the following information for each graphic arts material (ink, fountain solution additives, clean-up solvents, etc.) employed in each printing line:

3. Miscellaneous Requirements (vi)(a) – It is not clear why this provision was included. Since this PBR is setting a facility-wide limit and the limits are at or less than 50 percent of the major source threshold, this provision as written should be revised to reflect that compliance with this PBR ensures that the facility will not be a major source. The only federal requirement that cannot be waived would be for any area source MACT standards that could be eventually developed and imposed.

Thank you for the opportunity to work with you on this very important air permitting project impacting the printing industry. The PBR approach is an excellent example of permit streamlining and will provide numerous benefits to both Ohio EPA and the printing sector.

Sincerely,



Gary Jones
Manager, Environmental, Health & Safety Affairs
Graphic Arts Technical Foundation/Printing Industries of America
412-741-6860



Marcia Y. Kinter
Vice President-Government Affairs
Specialty Graphic Imaging Association
703-359-1313



Doreen M. Monteleone. Ph.D.
Director, Membership & Environmental Services
Flexographic Technical Association



John Jaymont
Assistant Vice President for Employee & industrial Relations
Printing Industries Association, Inc.
614-794-2300

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solutions@pianko.org

From: "David Newsad" <David.Newsad@rmtinc.com>
To: <rick.carleski@epa.state.oh.us>
Date: 9/8/04 1:23PM
Subject: draft rule comments- 3745-31-03

Pertaining to the draft OAC rule 3745-31-03 rule as distributed in August for review:

1. Overall I think the proposed "Emissions Threshold Exemption" is more complex than warranted and, therefore, will have very limited use (<5% of the total annually processed) to most Ohio facilities.

2.. Two new terms "uncontrolled potential to emit" and "controlled potential to emit" are introduced into the rule as part of the proposed Emissions Threshold exemption. These are critical terms used for evaluating applicability of this exemption.

In reviewing the current definitions for OAC rules 3745-31-01 (including as proposed to be revised), 3745-15-01 and 3745-21-07, I could find no definitions for these terms.

Moreover, since these terms are derivations of "potential to emit" (a term for which there is a definition in OAC rule 3745-31-01, this implies the definition of the new terms are intended to be distinctly unique for the proposed exemption.

For example, the current definition for "potential to emit" provides for taking credit for practically or legally enforceable requirements, limits or controls. The intent of revising this term to "controlled potential to emit" needs clarified to address any differences in using these credits or others for the exemption applicability .

In order to ensure a consistent understanding and interpretation of the exemption applicability among both agency staff and regulated facilities, definitions for each of these terms needed added either in OAC rule 3745-31-03 or in 3745-31-01.

3. The intent of the term "tons/12-month period" as used in the tables in (qq)(x) is ambiguous. From the recordkeeping requirements listed in (qq)(v)(e), it is suggested these are intended to be rolling 12-month limits. Suggest adding/revising language to clarify this term or revising this to state per "tons/rolling 12-months" as intended.

4.. The intent of the phrase "..no less than one and on half times the building height..." as used in (qq)(iv(a)) is unclear. I suspect this refers to any structure within a certain distance from the stack but, the rule's intent is unclear on this. For example, if a stack is located adjacent to more than one building what is the intended "building height" or, a second example, adjacent to a building with multiple segments of different heights as often is the case? For a consistent application of the exemption and to simplify the language,

suggest consider revising this criteria to cross reference the "GEP height" as determined in OAC rule 3745-16-01 and for which they are already defined technical procedures for evaluating this.

5. Per the language in (qq)(iv) and the rule synopsis flow chart provided , I interpret the criteria under (qq)(iii)(e) and (qq)(iv)(a-c) to only apply to emissions of those compounds listed in the 10/2 table and there are no restrictions on pollutant emissions listed in the 1.0 ton table when using this option. Is this correct? If I have this incorrect, please clarify why? In other words if I default (from (qq)(iii)(d)), using the "or" to (qq)(iii)(e) than the only restrictions applicable to the operations are for the compound emissions listed in the 10/2 table.

6.. Suggest revising the words "Is subject to...." in (qq)(iii) to "Qualifies for...". I believe this better communicates the intent of the language.

7. For the proposed "comment" to be added under 3745-31-03(A) suggest revising the language in end of the sentence from "...into any major new source review permitting action." as follows "...into any major new source review applicability determination and/or major new source review air quality impact analysis". I think this better communicates the intent. As I understand the comment's meaning, the OEPA's general intent is that the permitting exemption will still apply but, emissions from the exempted sources must be considered in major NSR applicability evaluations and/or air quality impact evaluations if major NSR is triggered.

David Newsad
Senior Client Service Manager
www.rmtinc.com
614-793-0026 ext 6209

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From: Mike Hopkins
To: Newsad, David
Date: 9/8/04 8:07AM
Subject: Re: PTI PBR structure/format suggestion

Thanks for your suggestion.

>>> "David Newsad" <David.Newsad@rmtinc.com> 09/07/04 03:44PM >>>
With the ozone nonattainment SIP issue pending and VOC reductions certain, I suggest revising the proposed PBR rules for GDF by cross-referencing pertinent applicability sections from the 3745-21-09 rather than regurgitating these in the PBR under "qualifications"..

In my opinion, is inevitable that Stage II requirements will be expanded and/or revised within the next 24 -36 months causing an almost immediate conflict in the RACT rules with the final PBR exemptions if adopted in the proposed format.

I believe by cross-referencing the applicability this will avoid the conflict and need to possibly reopen the PBR rule because of the O3 SIP revision.

Food for thought.

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CC: Carleski, Rick; Nichols, Jennifer

Supora Johnson - OAC 3745-31-03

From: Ned Ford <Ned.Ford@fuse.net>
To: <Chris.Jones@epa.state.oh.us>
Date: 9/26/04 1:26PM
Subject: OAC 3745-31-03

Dear Director Jones,

I am writing to encourage you to put a halt to the Permitting Process Efficiency Committee's proposed new rules for OAC 3745-31-03. Citizens would be entirely in favor of simplification of the permitting process for Ohio businesses if it were done right, but this rule is poorly conceived as it has been presented in its draft form at the present time.

Although the rule intends to relieve a permitting burden for small sources of toxic and hazardous air pollutants, it should not attempt to do so by completely eliminating regulatory oversight of these sources. In the absence of an alternative method, OEPA will be inviting some of these sources to substantially increase emissions as soon as they are out of regulatory view. Potential means for replacing permitting include regulation of the manufacture and sale of the feedstocks, simplified reporting forms, and are likely to include other methods which are specific to certain of the sources affected by this proposed rule.

Relying on monitoring of local air quality is not adequate. How is OEPA going to identify a source of a troublesome spike in emissions when you have removed the potential sources from your inventory?

The use of the atmosphere as a dumping ground for waste products is a privilege which has been abused. In the large majority of cases when sufficient pressure is brought to bear on a toxic source it becomes possible for the source to substitute a cleaner or non-toxic alternative process. Generally doing so permits the source to modernize infrastructure and become more competitive. This is especially true of combustion sources like the small boilers affected by this rule. Such boilers are notoriously poorly maintained, and as natural gas supplies diminish and as prices skyrocket it is a disservice to Ohioans who depend on this fuel for home and small business heating to remove pressure to maintain equipment in optimum order.

I strongly encourage you to reject this rule in its present form, and direct the Permitting Process Efficiency Committee to return only when they have produced an alternative rule that provides the State of Ohio and its citizens with some means of preserving a general overview of these small sources, which in sum are not a small fraction of the total emission burden on the people of this State.

If this letter has not been correctly directed to the right docket or individual at OEPA, please either correct this error, or let me know. Thank you.

- Ned Ford
3420 Stettinius Avenue
Cincinnati, Ohio 45208
513-533-9244
Ned.Ford@fuse.net

Director Chris Jones, Ohio EPA
122 S. Front Street
Columbus, OH 43215

September 30, 2004

Dear Mr. Jones,

The Ohio Environmental Protection Agency is proposing to amend OAC 3745-31-03.

I plead with you, do not let these changes happen. The proposed changes will not only hurt the environment but will surely increase the number of health problems for Ohio's citizens.

Washington County citizens are exposed to huge amounts of toxic air pollutants each day. We wake up to the odors, we wash the particulate off of our homes, we hide inside our homes with windows and doors shut or leave our homes when the offensive odors are just too much and we are truly scared for our health. We watch so many of our neighbors, friends and family members suffer from life threatening illnesses. They fight with every bit of strength they can muster and put up with horrendous treatments to try to save their lives. Many die prematurely. Asthma and breathing problems affect more of us everyday, the very young, the elderly and everyone in between. We support two very busy cancer centers in a 12-mile radius and countless people travel over 200 miles to receive life saving treatments.

Allowing these rule changes will be a disaster for Washington County citizens. The number of health problems we already suffer will increase as well as our financial and emotional burdens.

The proposed changes will allow the following:

- A significant rollback of OEPA regulation of air pollution sources
- 23,000 existing air pollution sources in Ohio to become exempt from their current air pollution permits, thus allowing them to release more toxins legally
- The elimination of public participation
- PCBs, mercury and other toxins to be released where they are currently controlled
- The State to lose the authority to shut down sources that damage our health, environment or public welfare

Do not let these changes to take place. Not one new job will be created by these changes.

Our lives truly depend on this.

Caroline Beidler

Caroline Beidler
1870 Michaelis Road
Marietta, Ohio 45750

RECEIVED

2004 OCT -5 PM 1:48

OFFICE OF THE DIRECTOR
OHIO EPA

From: "Dan McMahon" <dbmcmahon@fuse.net>
To: <rick.carleski@epa.state.oh.us>
Date: Sun, Sep 12, 2004 11:05 AM
Subject: Title X

Dear Mr. Carleski,

Our environment including the air we breathe is becoming more polluted every day. Please do not allow businesses to have exemptions from following responsible nonpolluting policies. If ordinary citizens follow simple practices such as recycling, filling up gas tanks after six o'clock and not mowing yards until evening, why should any business be allowed to contaminate our water and air supply? Polluting businesses facilitate a much greater impact on the resources that affect everyone.

In an attempt to become more "efficient" by eliminating permits, the public becomes the victim of serious health issues. Without clean air and water, no one can survive. Please consider the long range impact of such actions and your responsibility to be good stewards of our resources.

Sincerely,

Linda McMahon
5900 Crabtree Lane
Cincinnati, OH 45243

From: LP <ldp@cinci.rr.com>
To: <rick.carleski@epa.state.oh.us>
Date: Sun, Sep 12, 2004 11:37 AM
Subject: dropping permits

Dear Mr. Carleski,

I cannot believe what I have just heard. The Ohio Environmental PROTECTION Agency is considering dropping the requirement for permits for some smaller businesses like dry cleaners, printing shops, auto paint shops and others.

Well, I hope your consideration has come and GONE. You must be kidding me. The very agency we rely on AND PAY FOR in PROTECTING us from these polluters, that if left unmonitored and unchecked, would take advantage and pollute us at extraordinary rates and amounts is considering deleting permits to free up some man time. That is your job and responsibility. How else can you track and enforce necessary rules and regulations? Maybe the answer to do this in a more expedient manner lies elsewhere and I hope by the time you receive this letter, you have thought of the alternative method to put into practice.

If you cannot protect us from the businesses, persons and chemicals that harm us, what is the purpose of having the OEPA?

I thank you for your time and attention and look forward to hearing a response on your resolution in the near future.

Sincerely,
Linda Perrone
12117 S. Pine Dr. #324
Cincinnati, OH 45241
Email: ldp@cinci.rr.com

From: LP <ldp@cinci.rr.com>
To: "Susan Willeke" <Susan.Willeke@epa.state.oh.us>
Date: 9/24/04 11:55AM
Subject: Re: Ohio EPA Information Session

Dear Ms. Willeke,

While I appreciate your response on my original letter, I must still stand firm on my original request.

The examples you've stated, ie "lower emission standards" and/or "they have pollutions devices already, so the permits won't serve much purpose" is exactly the point. Ohio is approaching the most polluted state already, because the pollution control devices have not been enforced, by laxing them more and not tracking them because "they say they put in the devices" still does not ensure and protect against the pollutants.

My goodness, how many times are we going to be told "oops, an accidental higher amount of uranium was flushed in to the water-my bad, it wasn't done on purpose"? Are the restrictions, penalties and devices required to avoid these "mishaps" going to be enforced?

Because Ohio has more businesses producing these harmful chemicals than other states, doesn't make it ok to not require what should be demanded of these businesses. Actually, it's quite the opposite, you should be paying strict attention to them, because we have that many more businesses producing these chemicals. Versus a state that has more businesses in software developing that doesn't produce these chemicals.

If these business wish to operate in Ohio, they must adhere to these guidelines and laws and it is your responsibility to enforce them to PROTECT OHIOANS (and subsequently-the country).

Thank you for your time and attention. I look forward to hearing the correct resolution to this debate.

Sincerely,
Linda Perrone

On Fri, 24 Sep 2004 10:38:22 -0400, Susan Willeke
<Susan.Willeke@epa.state.oh.us> wrote:

- > Thank you for contacting Ohio EPA regarding the agency's proposal to
- > change regulations that govern small air pollution sources to make the
- > permitting process less burdensome while maintaining current
- > requirements for emissions control, monitoring and reporting that
- > protect air quality. I would like to offer you some clarifying
- > information as the Cincinnati Enquirer article did not accurately
- > represent Ohio EPA's proposal.
- >
- > There are 72,000 to 80,000 permitted units in Ohio's air pollution

- > permitting system. Similar states have 10,000 to 20,000 permitted
- > units. With resource constraints and the responsibility to adopt and
- > implement several new federally imposed air regulations, Ohio EPA must
- > become more efficient. The paperwork processing for very small emission
- > sources is a resource drain that produces little to no environmental
- > benefit. Processing fewer permit applications will allow Ohio EPA staff
- > to do more inspections and devote more time to larger emitting, higher
- > priority facilities.
- >
- > One solution is to lower the emission level that triggers the need to
- > apply for a site-specific air permit. To be exempt from the permitting
- > requirement, a facility would have to meet certain criteria; only
- > insignificant sources and those that would not require a health and
- > welfare evaluation would qualify for this exemption. These facilities
- > would still need to comply with all other air pollution rules.
- > Emissions reporting also would be required. Any size or type of
- > facility could include a project that would fall below the threshold,
- > which for most applications falls at 10 tons per year.
- >
- > Examples of facilities that would be covered under the threshold
- > exemption rules include a maintenance paint booth that is used to paint
- > factory parts when replaced or repaired. This type of paint booth
- > typically uses a small amount of paint and paints infrequently, having
- > very low emissions. Another example would be a small shotblaster;
- > this machine cleans metal parts by blasting sand or other material
- > inside an enclosure. These shotblasters are manufactured with built-in
- > air pollution control equipment that meets regulatory expectations, so a
- > permit has little value.
- >
- > Another solution is to regulate facilities through rules rather than
- > permits. The rules are industry-sector specific and include qualifying
- > criteria and all requirements that would normally be detailed in a
- > site-specific permit. If a company qualifies for a particular
- > permit-by-rule, it must comply with all the requirements in the rule to
- > be covered under the permit.
- >
- > Permit-by-rule provisions already exist in Ohio's rules for five types
- > of operations: emergency electric generators, plastic molding
- > facilities, crushing operations, soil vapor remediation and soil liquid
- > remediation activities. Ohio EPA wants to add six new categories
- > including: auto body refinishing, two categories of gasoline dispensing
- > facilities, natural gas-fired boiler/heaters, small size printing and
- > mid-size printing facilities.
- >
- > A public information session to promote public understanding of the
- > desired changes will be held on Monday, October 4, 2004, at 7 p.m., at
- > the Ohio Department of Transportation Building Auditorium, 1980 West
- > Broad Street, Columbus. In addition, public comments will be accepted
- > until October 13.
- >
- > Copies of draft rule changes are available at Ohio EPA's Division of Air
- > Pollution Control and can be requested by calling Jennifer Nichols at
- > (614) 644-3696. Written comments can be mailed to the Division of Air
- > Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

- > All comments must be received by Wednesday, October 13, 2004.
- >
- > This is an early review stage in the rule development process. Ohio EPA
- > will consider all comments before it formally proposes any rule
- > changes. When the rules are formally proposed, Ohio EPA will hold a
- > public hearing and offer another public comment period before any rule
- > changes are adopted.
- >
- > I hope this information is helpful. If you have additional questions,
- > please feel free to contact by e-mail or by the telephone number listed
- > below.
- >
- > Sincerely,
- >
- > Susan Willeke
- > Public Involvement Manager
- > Public Interest Center
- > Ohio EPA
- > P.O. Box 1049
- > Columbus, Ohio 43216-1049
- > phone: (614) 644-2160
- > fax: (614) 644-2737
- > susan.willeke@epa.state.oh.us
- >

CC: "Crowley, David" <David.Crowley@cincinnati-oh.gov>, "Cole, Laketa" <Laketa.Cole@cincinnati-oh.gov>

From: nichole Hoch <nbhochy@yahoo.com>
To: <rick.carleski@epa.state.oh.us>
Date: 9/13/04 1:04PM
Subject: pollution permit revokation

It is imperative that a record of all businesses releasing pollution and toxins in our state be kept. It may lessen paperwork, however that reason seems flimsy. New businesses could open around the state that perhaps could not have opened in other states due to our laxness.

Our current Administration has done enough environmental harm. Please continue to strive and protect our environment.

Nichole Hoch
2557 E. Broad St.
Columbus, OH 43209

Do you Yahoo!?
Shop for Back-to-School deals on Yahoo! Shopping.

From: "Clyde Miller" <cmiller1992@earthlink.net>
To: <rick.carleski@epa.state.oh.us>
Date: 10/7/04 2:21PM
Subject: air pollution rule changes for new pollution sources

Mr. Carleski,

My wife, Rita, and I attended the Public Information Session on Oct. 4, 2004. We do understand the budgetary constraints as well as the political pressures upon the OEPA to become more efficient. However, as citizens, we are much more concerned with peoples' health and the environment.

Even though it was mentioned at the meeting that Ohio's air quality has improved since the 1970's, we and our neighbors have noticed a deterioration in the quality of air within our neighborhood. The problem as we perceive it is due to the accumulation of lots of small polluters rather than one large polluter such as the defunct trash burning power plant. The current PTI process doesn't address this problem either but at least citizens can influence the details of the PTO as well as have a public say in the process. These new rules will eliminate the public's role in that process.

I would recommend that the OEPA change its rules so that it monitors the total amount of pollution in a specific neighborhood rather than setting limits and monitoring individual small polluters. This could be accomplished by having mobile monitors that could be set at a specific site perhaps for a month then moved to a different site. This would allow you to monitor a much greater number of sites and appease citizens demands for monitoring. It would also alleviate our fear that lots of small polluters will produce as much pollution as one large source but there is nothing that the OEPA could do about it since each individual polluter is below the threshold quantity.

Sincerely,

Clyde and Rita Miller

Clyde Miller
cmiller1992@earthlink.net
Why Wait? Move to EarthLink.

From: "Rita M Miller" <rmmiller1992@earthlink.net>
To: <rick.carleski@epa.state.oh.us>
Date: 9/16/04 4:50PM
Subject: new regulation

Rick Carleski,

We have been residents of our home on the south west side of Columbus for 27 years. We had been exposed to years of extremely high dioxin levels from the former trash burning plant. Currently, our neighborhoods are subject to strong odors. Considering these issues, we find it unconscionable that the Ohio EPA is proposing the Permit to Install Emissions Threshold Exemption Rule.

The health of the people of Ohio needs to be considered this time.

Rita and Clyde Miller
1992 Candlenut Circle
Grove City, Ohio 43123

Rita M Miller
rmmiller1992@earthlink.net
Why Wait? Move to EarthLink.

From: "M.A. Petrarca" <MAP@copper.net>
To: <rick.carleski@epa.state.oh.us>
Date: 10/13/04 9:10AM
Subject: Interested party comment PBR/PET

Mr. Carleski,

Thank-you for this opportunity to participate in the public comment process.

I have attached my comment in an .rtf document and have inserted the text in the body of this e-mail.

Public comment on proposed rule change:

Permit to Install Emissions Threshold Exemption Rule, Public Meeting
October 4, 2004

M. Aurelie Petrarca
2501 Creekwillow Place
Columbus, OH 43123

In trying to come up with public comment regarding the Permit to Install Emissions Threshold Exemption Rule I visited the Ohio EPA website and found the following:

Ohio EPA: quoted from <http://www.epa.state.oh.us/>

Vision Statement:

"The Ohio EPA is a trusted leader and environmental steward using innovation, quality service, and public involvement to ensure a safe and healthy environment for all Ohioans."

Mission Statement:

"To protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship."

Accomplishments:

"Ohio EPA has played a prominent role in many of the state's environmental success stories. We have a nationally acclaimed water monitoring program, one of the country's most extensive air monitoring networks, a groundbreaking agreement with the federal government to oversee clean-ups at federal sites and an innovative funding program to protect and restore water resources."

The Division of Air Pollution Control (DAPC):

<http://www.epa.state.oh.us/dapc/>

Mission Statement:

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

As a member of the general public, I was fairly uninformed about the workings of the Ohio EPA until an environmental concern erupted in my neighborhood. I attended the meetings of a grassroots organization called SouthWest Neighbors Protecting our Environment (SWNPE). I learned about file reviews, public hearings and the like.

I came to the conclusion that the Ohio EPA had fallen victim to the same politicized trap plaguing most of our governmental or appointed bodies:

The public interest is no longer the focal point, business and industry helps to write the rules that govern business and industry.

I'm asking that the Ohio EPA follow it's vision to become a trusted leader and environmental steward, to implement it's mission to protect the environment and the public health. The proposed rule change, championed at the public meeting on October 4, 2004 as the answer to the Ohio EPA's lack of funding and relief for overworked staff, puts the documentation process into the hands of the businesses that generate the hazards to the environment.

According to the Ohio EPA the honor system would prevail. I would love to believe in the honor system. I personally try to live by the honor system. It would indeed be a wonderful world if we could stop politicizing everything and embrace a golden rule existence where the needs of others are put before personal gain, exorbitant wealth, etc. I realize that will never happen. We are constantly told that we live in a "market driven" society. We are sold on everything that we do. 30 second sound bites and infomercials have replaced hard news reporting. Whoever yells the loudest must be right. It is time for the silent observer to stand and witness to the actions of the bellowing throng that pollutes our air, our water, our land, and our minds.

If the proposed rule change goes into effect, the public would have to rely on the business to open up the files that they are required to keep. Currently, we can request a file review from the Ohio EPA. We can check the Ohio EPA web site and learn of the businesses that have requested a permit to install. We learn about these businesses before they have constructed their buildings or modified existing structures.

We would like to continue to have public involvement regarding any proposed permit to install before a business is at the point of being ready to fire up it's stacks, even if that business is considered to be minimal according to the Ohio EPA's standards. The emissions for the start-up or modification might be small in terms of overall impact on the state's air but damaging when combined with the pollution that currently permeates an area or neighborhood.

As a concerned citizen and a member of SouthWest Neighbors Protecting our Environment, I would ask that the proposed rule change not go through.

In closing, I would like to ask that the Ohio EPA put "one of the country's most extensive air monitoring networks" to use at Frank Rd and 71 South. The southwest corridor of Franklin County needs air monitoring regardless of the outcome of this proposed change but, if the proposed rule change goes through, the need for air monitoring will increase greatly. We need the protection of the Ohio EPA, we ask for the protection of the Ohio EPA, we beg for the protection of the Ohio EPA. Will the Ohio EPA stand up for the stewardship of the unprotected?

M. Aurelie Petrarca
2501 Creekwillow Place
Columbus, OH 43123
614 539-9647

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Using Opera's revolutionary e-mail client: <http://www.opera.com/m2/>

From: "Linda Myer" <lmyer@columbus.rr.com>
To: <kevin.johnson@epa.state.oh.us>
Date: 10/5/04 12:34PM
Subject: proposed rules

I am not sure that you are the proper person to be contacting- I was directed to you by your agency web-site. I read the proposed pollution rules in the Columbus Dispatch yesterday, and wanted to voice my extreme displeasue with the concept. I live on Buckeye Lake, and even small amounts of toxic discharge could result in the loss of use of the lake by everyone.

As an example, an illegal dump was being operated on SR 13 (I believe the name was C.D. Cotterman); complaints to the EPA resulted in being informed that the EPA no longer handles these matters, and had farmed it out to our county board of health. After months of pressure, suit was finally filed, and the "settlement" consisted of covering over buried barrels with dirt. There was no effort whatsoever to force the removal of the unknown contents of the barrels. They are buried at the Eastern wetland area of the lake!

Now, the EPA wants to dump even mnore enforcement; haven't years of non-compliance with US guidelines been enough? Perhaps Ohio enjoys being the laughingstock of the nation when it comes to environmental "protection"; I, for one, find no humor whatsoever in the situation.

For the record, if any is even being kept, I am opposed to these obscene, pro-pollutor "guidelines", and will push to see legislation enacted (when the political worm finally turns, as it always does) holding those who failed to protect the public civilly and criminally liable.

Peter J. Myer
11062 Honey Creek Road
Thornville, Ohio 43076
(740) 246-5415

**Edward L. Hughes
42 Watson Grove Rd.
Cheshire, Ohio 45620**

October 3, 2004

Richard J Carleski, P.E.
Ohio Environmental Protection Agency, DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

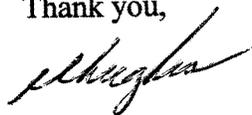
Re: Permit to Install Emissions Threshold Exemption Rule

Mr. Carleski:

I want to let you know that I am not in favor of any rule that will lessen public involvement, input, or awareness of any potential pollutants that are added to local environments.

Some kind of effective prospective pollution safe-guards with some legislative teeth should be kept in place to protect all Ohio residents from air/water/soil pollution.

Thank you,



Rec'd by DAPC, OEPA
2004 OCT - 8 AM 10: 15

September 28, 2004

Ohio Environmental Protection Agency, DAPC
ATTN: Richard J. Carleski, P.E.
Lazarus Government Center
PO Box 1049
Columbus OH 43216-1049

RE: Draft Air Pollution Rule Changes for New Pollution Sources

Dear Mr Carleski:

The EPA's current proposal for draft air pollution rule changes for new pollution sources does not adequately protect our communities, public, and children. I urge the EPA to set standard procedures not allowing the new rule change changes to become effective.

I am opposed to the proposed new rule called the 'Permit to Install Emissions Threshold Exemption Rule'. I feel that by changing from the permit process to the rule process, we as the public lose. Rules will be set by the industries that have been allowed to break rules openly to this date. We need the permit process as it will help guarantee studies to show what effects the emissions would have on the environment and surrounding communities.

Again, I oppose any rule change by the Ohio Environmental Protection Agency on this issue.

Thank you for allowing me to share with you my concerns for our communities future.

Sincerely,

James R. Rife

JAMES R. Rife
109 South Locust St.
P.O. Box 126
Cheshire, Ohio 45620

2004 OCT - 8 AM 10: 18

Rec'd by DAPC, OEPA

From: <junedanieri@SAFE-mail.net>
To: <rick.carleski@epa.state.oh.us>, <chris.jones@epa.state.oh.us>, <district62@ohr.state.oh.us>, <distric72@ohr.state.oh.us>, <district28@ohr.state.oh.us>, <district40@ohr.state.oh.us>, <district59@ohr.state.oh.us>, <SD31@mailr.sen.state.oh.us>, <rspada@mailr.sen.state.oh.us>, <SD07@mailr.sen.state.oh.us>, <SenatorMallory@maild.sen.state.oh.us>, <rmiller@maild.sen.state.oh.us>
Date: 10/5/04 11:03AM
Subject: Permit to Install Emissions Threshold Exemption Rule

Re: Permit to Install Emissions Threshold Exemption Rule

In my opinion, approval of this proposal would be a reckless endangerment of public health.

Sincerely,
June D'Anieri <junedanieri@safe-mail.net>

From: <mmlighthearted@sbcglobal.net>
To: <rick.carleski@epa.state.oh.us>
Date: Sun, Sep 12, 2004 6:07 PM
Subject: By not seeking permits for small businesses, this may make someone's job easier, however, in the sho

By not seeking permits for small businesses, this may make someone's job easier, however, in the short and the long run, Ohio will become more polluted than ever. Since the Republicans are running the system, however, Republicans do NOT care about the environment. Having lived here over 25 years, now, I would hate to see the state become as polluted as Texas. Let a Republican run things and see what happens!!!!
D K Burns