

Environmental Update

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Welcome to the Shumaker, Loop & Kendrick, LLP Environmental Update; a monthly publication dedicated to providing content regarding Ohio administrative and regulatory law, as well as up to date information on the Ohio EPA's rulemaking process, including early stakeholder outreach, interested party review and request for comments, proposed rules, and public comment periods. In addition, the update offers information regarding environmental issues affecting businesses and environmental professionals across the state of Ohio. If you have questions regarding the information provided, feel free to contact Marcus Miller at mmiller@shumaker.com or 614.628.4466.

LAWYER SPOTLIGHT

[Mike O'Callaghan](#) specializes in environmental law, workplace health and safety matters, and real property litigation. He has extensive experience in representing clients in all aspects of environmental law, including compliance and defense of enforcement proceedings. He also regularly represents clients in a variety of commercial transactions involving environmental issues, including due diligence in mergers and acquisitions and brownfield redevelopment projects. Mike advises employers on workplace health and safety compliance and represents employers in OSHA proceedings. He also has significant experience involving real property litigation, including environmental and commercial landlord/tenant disputes.



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OHIO EPA RULEMAKINGS AND ANNOUNCEMENTS

Air

Early Stakeholder Outreach - OAC Rules 3745-31-34 and 3745-77-11 - Greenhouse Gas Tailoring Rules: The Ohio Environmental Protection Agency (Ohio EPA) is seeking early stakeholder input on the following rules: 3745-31-34 and 3745-77-11 of the Ohio Administrative Code (OAC). The rules contain the requirements for the permitting of major sources of greenhouse gas



emissions. "Greenhouse gases" subject to regulation, as defined in 40 CFR Part 51.166, consist of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. A "major source" of greenhouse gases are those sources emitting any of the six gases individually or in combination exceeding a CO₂ equivalent quantity established in the rules. Ohio EPA has received feedback from the United States Environmental Protection Agency (U.S. EPA) that the rescission language originally included in these rules is not approvable. Therefore, in order to have a fully approved and delegated program, it may be necessary to modify or remove the existing language. The Early Stakeholder Fact Sheet is available [here](#). The comment deadline is **Monday, April 6, 2020**.

If you have any questions regarding the Greenhouse Gas Tailoring Rules, contact [Mike Born](#) at mborn@shumaker.com or 614.628.4415.

Public Notice - Request for Comment - Draft Review of Ohio Administrative Code (OAC) Rules OAC Chapter 3750, State Emergency Response

Commission: On behalf of the co-chairs of the State Emergency Response Commission (SERC), the Ohio EPA, Division of Air Pollution Control (DAPC) has collected all the non-exempt Ohio Administrative Code (OAC) 3750 rules into a single group and performed a review to satisfy the requirements of Ohio Revised Code (ORC) 106.03 (5-year rule review process). Ohio EPA recommends no changes to OAC Rules: 3750-1-02, 3750-10-(03, 05, 07-09), 3750-15-(01, 02, 05, 10), 3750-20-(60, 76, 78, 80, 82, 84), 3750-25-(01, 05, 10, 12, 13, 20, 25), 3750-30-25, 3750-50-(03, 05, 07-10, 15, 20, 25), 3750-75-(02-05, 07-10), 3750-80-(01-03), 3750-85-(01-03), and 3750-90-01. Ohio EPA also recommends amending 3750-1-01, 3750-10-01, 3750-20-10, 3750-20-70, 3750-20-72, 3750-20-74, 3750-25-15, 3750-30-01, 3750-30-15, 3750-30-20, 3750-30-27, and 3750-50-01 to fix typos and add federal rule language. The Public Notice is available [here](#). The Business Impact Analysis is available [here](#). The deadline for comments you may have is **Friday, April 10, 2020**.

If you have any questions regarding the State Emergency Response Commission Rules, contact [Cheri Budzynski](#) at cbudzynski@shumaker.com or 419.321.1332.

Request for Designation to Attainment for Sulfur Dioxide (SO₂), Areas Surrounding the General James M. Gavin and Kyger Creek Station Power Plants - Draft Available for Comment: Ohio EPA is requesting that the U.S. EPA revise the current air quality designation for the area around the General James M. Gavin and the Kyger Creek Station Power Plants to attainment/unclassifiable with respect to the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). Based on monitoring data, Ohio EPA is submitting a request for the area to be designated as attainment under Round 4 area designations that will occur by December 31, 2020. Additional information is available [here](#). The comment deadline is **Monday, April 13, 2020**.

If you have any questions regarding the sulfur dioxide national ambient air quality standards, contact [Mike Born](#) at mborn@shumaker.com or 614.628.4415.

Public Notice - Request for Comment - Draft Rules in OAC Chapter 3745-22, Asbestos Licensing Rules:

Ohio EPA, DAPC has completed draft rule language in OAC Chapter 3745-22, "Asbestos Licensing Rules" required to apply for and obtain U.S. EPA approval of the Ohio EPA Asbestos Licensing/Accreditation Program. The asbestos law, Ohio Revised Code (ORC) chapter 3710 was amended for this same purpose and became effective on October 16, 2019. Ohio EPA must apply to U.S. EPA for approval of the asbestos licensing program and demonstrate how the program meets the requirements found in the "Asbestos Model Accreditation Plan" 40 CFR part 763, Appendix C to Subpart E. Changes have been made so that the rules match language in Ohio EPA's existing asbestos licensing law in ORC Chapter 3710, and to make various minor changes for clarification and to match agency and Legislative Service Commission (LSC) formatting conventions. The Public Notice is available [here](#). The Business Impact Analysis is available [here](#). The comment deadline is **Friday, April 17, 2020**.

If you have any questions regarding the Asbestos Licensing Rules, contact [Cheri Budzynski](#) at cbudzynski@shumaker.com or 419.321.1332.

Public Notice - Request for Comment - Draft New Rules in OAC Chapter 3745-107, Power Plant Efficiency Rules:

The Ohio EPA, DAPC is providing a draft for comment of new rules in OAC Chapter 3745-107, "Power Plant Efficiency Rules." These new rules are related to implementing the federal Affordable Clean Energy Rule (ACE): Incorporation of new rules 3745-107-01 to 3745-107-04 of the Administrative Code. The rules are being developed to require electric generating units to submit elements to Ohio EPA that will aid in the development of a plan under the emission guideline for reducing emissions of carbon dioxide. The rules are a part of Ohio's plan and the proposed new rules will be submitted to the U.S. EPA to fulfill the requirements of the Clean Air Act (CAA). The Public Notice is available [here](#). The Business Impact Analysis is available [here](#). The comment deadline is **Monday, April 27, 2020**.

If you have any questions regarding the Power Plant Efficiency Rules, contact [Mike Born](#) at mborn@shumaker.com or 614-628-4415.



Water - Drinking and Groundwater Public Notice: Final Rulemaking Governing Primary Drinking Water Standards:

Ohio EPA has filed the following final rules of the OAC:

Rule Number | Rule Title
Action

- 3745-81-32 | Public Notification (Amended) Final
- 3745-81-72 | Disinfection of water from surface water sources (Amended) Final
- 3745-81-73 | Filtration of water from surface water sources (Amended) Final
- 3745-81-75 | Recordkeeping, reporting, and actionable requirements (Amended) Final
- 3745-81-79 | Filter backwash recycling (Amended) Final

The Director's action in this matter is pursuant to the procedural requirements of ORC Chapter 119 and is based upon the record of the public hearing conducted by Ohio EPA on November 6, 2019, as well as comments received during the public comment period. The Director's order of adoption was issued on March 13, 2020. These adopted rules became effective on **March 23, 2020**. Additional information regarding the rules is available [here](#).

If you have any questions regarding the State Emergency Response Commission Rules, contact [Cheri Budzynski](#) at cbudzynski@shumaker.com or 419.321.1332.

Division of Environmental Response and Revitalization - Voluntary Action Program

Vapor Intrusion Guidance Documents: Ohio EPA's Division of Environmental Response and Revitalization (DERR) released two guidance documents regarding vapor intrusion on March 10, 2020. Follow the links below to view the documents.

["Recommendations Regarding Vapor Intrusion Response in Ohio"](#)

["Sample Collection and Evaluation of Vapor Intrusion to Indoor Air guidance for Remedial Response, Resource Conservation and Recovery Act, and Voluntary Action Programs"](#)

If you have any questions regarding the vapor intrusion guidance, contact [Mike O'Callaghan](#) at mocallaghan@shumaker.com or 614-628-4431.

EPA COVID-19 RESPONSE

Public Water System Emergency Order: On March 31, 2020, in response to the COVID-19 outbreak, Ohio EPA issued an emergency order prohibiting a Public Water System from disconnecting customers' water due to nonpayment of fees or charges. The Order is valid during the period of Governor DeWine's [Executive Order 2020-01D](#) issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date. EPA's Order is available [here](#).

Additional Ohio EPA guidance: For information regarding Ohio EPA's guidance regarding enforcement discretion and public water systems issued on March 21 (modified on March 26) and March 25, 2020 in response to COVID-19, please see the Shumaker Client Alert below.

[Client Alert: Ohio EPA Issues Two COVID-19 Policies](#)

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our [Shumaker COVID-19 Client Resource Center](#) at shumaker.com. We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by Shumaker lawyers around the clock.

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