

**Sierra Club Great Lakes Program
Toxic Air Pollution Education Series**

A Narrative Report on Ohio's Rules
on Toxic Air Pollution

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Forward

This document is one in a series produced for the Sierra Club Great Lakes Program in order to facilitate and increase public understanding of toxic substance issues and the connection between toxic air pollution, Great Lakes water pollution and effects on human health and the environment.

In this document, we brief the reader on current provisions of the Ohio Environmental Protection Agency's rules and unpromulgated guidance and policies dealing with toxic air pollution. The Sierra Club Great Lakes Program hopes that these educational materials will assist citizens in their use of these regulations and stimulate discussion about potential changes in Ohio policy to more fully protect public health and the environment.

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Note to Readers:

This document assumes understanding of some terms and some of the basic science of air quality regulation and toxicology that is explained in the Sierra Club Great Lakes Program Airborne Toxicant Education Series document entitled "An Introduction to Airborne Toxicant Evaluation and Regulation."

Persons who are not already familiar with basic concepts of air quality regulation and toxicology should first read that introductory briefing paper before reading this document.

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1. Introduction

The purpose of this document is to brief the reader on Ohio Environmental Protection Agency's (OEPA) Air Pollution Rules affecting toxic air pollution. Our analysis is confined to discussion of state initiatives that go beyond minimum U.S. EPA requirements under the Federal Clean Air Act (CAA) for controlling hazardous and toxic air pollutants.

2. Ohio's Statutory Provisions Affecting Toxic Air Pollution

Ohio's air pollution statute is found at Title 37, Section 3704 of the Ohio Revised Code. Some key provisions of this statute affect the control of airborne toxic emissions.

2.1 Ohio's Statutory Emission Source Exemptions

Ohio's air statute creates an odd exemption scheme for small air pollution sources:

“(A) In addition to any other exemption provided in this chapter or rules adopted under it, an air contaminant source is exempt from this chapter and rules adopted under it if the emissions of particulate matter, nitrogen oxides, *organic compounds*, sulfur dioxide, carbon monoxide, lead, or *any other air contaminant* from that source do not exceed *ten pounds per day*, as verified in accordance with division (C) of this section....” (Emphasis added)¹

This exemption is prohibited when the Federal Clean Air Act requires such limits, when radio nuclides are involved, when the source is part of a larger emission source or when the source emits more than one ton of federally regulated hazardous air pollutants. The exemption is also prohibited when the Ohio EPA Director publishes a rule intended to protect the public health and welfare that would restrict such emissions.

The same types of exemptions that are contained in the statute are also found in the in the Ohio air rules. There is a distinction, however, between the regulatory treatment of the statute and the rules because of the concept defined in the Ohio air rules of “potential to emit” and “potential emissions.” The “potential to emit” thrust of the rules appears to key any exemptions to the amount of emissions that would occur at a source for which an exemption is being considered to that level of emissions that would occur without air pollution control equipment in most circumstances.² This means that a source with controlled emissions less than the exemption level may, in fact, not be

¹ Ohio Revised Code (ORC) Title 37, §3704.011(A)

² Ohio Administrative Code (OAC) 3745-15-05 – “de minimis” air contaminant source exemption. “Potential to emit” is defined at OAC 3745-15-05(A)(6)

eligible for the exemption since their uncontrolled emissions exceed the exemption emission threshold.

Despite the provisions prohibiting certain exemptions, the rules may potentially allow emissions of potent environmental carcinogens and toxicants that pose excessive environmental and public health risks unless the Director publishes a rule to prevent such emissions. At this writing, no such rule has been enacted by the OEPA Director that would, for example, restrict the maximum public health risk from emissions of potent environmental carcinogens or regulate mercury emissions from sources that emit less than ten pounds per day.

2.2 Ohio's Weak Statutory Attempts to Require a Technology-Based Emission Control Requirement

Ohio's air statute contains a requirement defining "Best Available Technology" (BAT), but this requirement is weak and relatively ineffective:

(F) "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 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. (Emphasis added)³

This requirement is considerably less stringent of a control technology review than is required to permit a source under the Prevention of Significant Deterioration (PSD) provisions of the Federal Clean Air Act. The federal PSD provisions require a "top down" methodology. Under a "top down" control technology determination, all available control technologies must be identified for technical feasibility. Then the most stringent technology is selected that is not otherwise eliminated from consideration because of adverse economic and environmental aspects.

Ohio's BAT rule doesn't mandate any particular stringency in making control technology decisions. It doesn't require the best emission control or provide any guidance at all on how the Director should make a control technology determination. In fact, under the statute, the Director can pick any level of control technology stringency he or she might choose, including the least efficient control technology available..

³ ORC Title 37, §3704.01(F)

The thrust of both the statute and the OEPA rules is to require that applicants for a permit to install new and/or modified sources comply with Ohio's "best available technology" requirements by simply including a "demonstration of best available technology" in their applications.⁴

However, the statute restricts the discretion of the OEPA Director in making control technology decisions with a additional mandate likely to weaken control technology decisions:

*"(T) Adopt procedures under which the director shall consider best available technology for the pollutants regulated by the new source performance standards established pursuant to the federal Clean Air Act in order to establish emission limits in installation permits issued pursuant to division (F) of this section. The emission limits shall be equivalent to those new source performance standards unless the standards are more than five years old or have not been reviewed by the United States environmental protection agency for more than five years. In determining what technology is best for a specific source application, the director may consider the extent to which a technology generates pollution or waste other than air emissions and shall approve the most cost effective among essentially similar efficient control technologies as demonstrated by the permit applicant to the satisfaction of the director. Any facility that is subject to the federal prevention of significant deterioration regulations and major new source review shall comply with those regulations."*⁵

The effect of this language is to strongly influence OEPA decisions against making emission limitations that are more stringent or regulate more chemical emissions than Federal New Source Performance Standards, which generally do not regulate toxic air pollutants for all source categories.

2.3 Open Burning for Construction Activities

The Ohio statute provides a relatively free rein for contractors to burn construction waste at construction sites. A local municipality or township may issue permits to contractors to burn construction debris at construction sites. Construction debris is limited to:

⁴ ORC Title 37, §3704.03(F)

⁵ ORC Title 37, §3704.03(T)

“ natural wood, lumber, paper, cardboard, and wooden boxes but not including any product having a rubber or petroleum base...”⁶

Open burning can be a significant source of air pollution and toxic emissions from the incomplete combustion of waste materials that generally occurs during such burning operations.

3 Ohio's Air Pollution Administrative Agency Regulations and Unpromulgated Guidance Affecting Toxic Air Pollution

3.1 General Duty Provisions in Ohio Regulations with Possible Application to Toxic Air Pollution Regulation

Ohio's air pollution regulations contain two general duty regulations. The first regulation provides an interpretive context for all other Ohio EPA air pollution regulations:

“It is the purpose of all air pollution regulations to set forth such requirements as shall be necessary to secure and maintain those levels of air quality which are consistent with the protection of health and the prevention of injury to plant, animal life, and property in the state of Ohio, and to provide for the comfortable enjoyment of the natural attractions of the state to the greatest extent practical. All regulations of the director shall be construed in such manner as to effectuate this purpose.”⁷

However, this general duty provision is weak because it is only written to bind the Director of Ohio EPA and not as a general duty binding on private parties. However, citizen activists may be able to use this provision to affect the interpretation of existing Ohio EPA regulations in a way that would extend their coverage over toxic air pollutants.

The second general duty provision provides Ohio EPA's prohibition against “any person” whose emission activities cause a public nuisance. Nothing in this rule limits its application only to common pollutants or to federally-regulated toxic pollutants.

“(A) Except as provided in paragraph (B) of this rule, the emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations

⁶ ORC Title 37, §3704.11(C)(1)

⁷ OAC 3745-15-02 Purpose section

of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

(B) Those sources of odors not subject to regulation under Chapter 3745-17, 3745-18, 3745-21 or 3745-31 of the Administrative Code shall not be subject to this rule.”⁸

The second provision under (B), however, provides a significant loophole. It provides that if a source is not regulated by the Ohio particulate, sulfur dioxide, volatile organic compound and new source permitting rules, then the fairly tough prohibition under paragraph (A) does not apply, and the source is free to cause such public nuisances without regulation. This exemption opens the way for a source to argue that the nuisance provision does not apply to them as long as the rules cited in the exemption paragraph provide no applicable emission limitation or permit requirement to a particular source or source category. Note that a public nuisance would also include serious public health damage caused by release of toxic substances.

3.2 Toxic Air Pollution Regulation under Permits to Install for New Sources

Ohio's air pollution regulations do not contain a great deal of specificity as to the regulation of toxic air pollution. Many of the authorities provided are at the discretion of the OEPA Director. Some of the requirements that apply to toxic air pollutants must be inferred from more general language.

3.2.1 Applicability of Ohio's Permit to Install (PTI) Regulation to Toxic Air Pollution and Procedural Requirements

Ohio's permit to install (PTI) rules require a permit for new and modified emissions of “air pollutants.” Ohio's regulations define “air pollutant” to be:

“‘air pollutant’ or ‘air contaminant’ means particulate matter, dust, fumes, gas, mist, smoke, vapor or odorous substances, or any combination thereof.”⁹

The effect of this definition is to bring nearly any airborne toxicant under the definition of “air pollutant.”

⁸ OAC 3745-15-07 Air pollution nuisances prohibited

⁹ OAC 3745-15-01(C), definition of “air pollutant”

The Ohio PTI rules go on to require:

“Except as provided in rule 3745-31-03 [Ohio’s list of processes exempt from the permit requirement] of the Administrative Code, no person shall cause, permit or allow the installation of a new source of air pollutants.....or allow the modification of an air contaminant source.....without first obtaining a permit to install from the Director....”¹⁰

The regulations contain broad discretionary authority for the Director of Ohio EPA in making decisions concerning permits to install:

“(C) In deciding whether to grant or deny a permit to install or plan approval, the director may take into consideration the social and economic impact of the air contaminants, water pollutants, or other adverse environmental impact that may be a consequence of issuance of the permit to install or plan approval.

(D) The director may impose such special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality..... The director may impose terms and conditions necessary to ensure compliance with any provisions of the statutes or regulations of the state of Ohio that are not mandated by the federal Clean Air Act or regulations adopted by the administrator thereunder, but such terms and conditions shall be enforceable as state law only, and shall be designated as such in the permit to install.¹¹

Under this provision, the Director could conceivably impose stringent emission limitations for persistent bioaccumulative toxicants. However, the language is still discretionary and the Ohio EPA Director is under no obligation to actually impose such requirements.

In practice, imposing new emission control requirements in this manner potentially allows regulated parties to raise fairly powerful defenses against application of such requirements. Sources could argue the imposition of more stringent requirements under this provision constitutes an arbitrary and capricious action, abuse of discretion, denial of equal protection under the law and selective enforcement with a high likelihood of success in a state or federal court.

¹⁰ OAC 3745-31-02(A)(1), permit to install requirement; See also Ohio EPA Division of Air Pollution Control, Engineering Section, Engineering Guide #1 (available at Ohio EPA’s web site)

¹¹ OAC 3745-31-05(C) and (D), criteria for approving or denying a permit to install (in part).

For major stationary sources and major modification sources in areas that already meet existing air quality standards, the Ohio rules contain an unusual and potentially useful provision requiring pre-application monitoring for “non-criteria” pollutants (which would include potential toxic pollutants emitted by a source, other than those hazardous air pollutants regulated by the Federal Clean Air Act):

“(C) Non-criteria air pollutant pre-application analysis

With respect to any air pollutant for which no national ambient air quality standard exists excluding pollutants listed under section 112 of the Clean Air Act, the pre-application analysis shall contain such air quality monitoring data as the director determines is necessary to assess ambient air quality for that air pollutant in any area that the emissions of that air pollutant would affect.”¹²

Whether this requirement is actually being carried out in Ohio for major new and modified source permitting in practice is beyond the scope of this document.

3.2.2 The Best Available Technology Requirement under the Ohio Permit to Install Air Regulations

We’ve already noted (in section 2.2) the statutory requirement that applicants for a permit to install must include a demonstration of “best available technology” in their applications.¹³

The permit to install regulations define “best available technology” with precisely the same language as is contained in the statute as discussed in Section 2.2.¹⁴

The air regulations then establish the following, in part, as a criterion the Director of the Ohio EPA must use when making a decision to issue or deny a permit to operate:

“(3)[if the Director determines the emission source will] Employ the best available technology, except when the only requirement to obtain a permit to install is due to

¹² OAC 3745-31-14(C), Pre-application analysis, attainment areas

¹³ ORC Title 37, §3704.03(F)

¹⁴ ORC Title 37, §3704.01(F); OAC 3745-31-01(N)

a modification as described in paragraph (MM)(1)(b) of rule 3745-31-01 and paragraph (A)(2) of rule 3745-31-02 of the Administrative Code.”¹⁵

Ohio EPA staff have published an engineering guide describing requirements to control “non-criteria pollutants.” In answering an inquiry concerning sources that only discharge such pollutants, the Engineering Section states:

“The evaluation of permit to install applications for sources that emit only non-criteria pollutants will primarily involve a case-by-case analysis of what constitutes best available technology.”¹⁶

As noted in Section 2.2, the language of Ohio’s “best available technology” requirement is weak because it doesn’t specify the level of stringency and does not require the highest level of emission control efficiency in the setting of an emission limitation. However, Ohio EPA staff have attempted to make a more stringent interpretation of this Ohio BAT requirement by publication of another Engineering Guide:

“For each new source, regardless of size or location, BAT is a case-by-case determination of an emission limit and/or control technique which, taking into account environmental, energy, and economic considerations, represents the maximum emission control achievable by the source. In no instance shall the emission level of control measure specified in the BAT determination be less stringent than that allowed under any applicable state or federal rule.”¹⁷

This Ohio EPA Engineering Guide thus attempts by interpretation to significantly increase the stringency of BAT determinations by specifying BAT in the form of an emission limitation, by incorporating environmental concerns and, most importantly, by saying that the stringency is to reflect the “maximum emission control achievable.”

Ohio EPA officials claim that they have been able to insist on stringent best available technology decisions under the provisions of the engineering guide cited above. However, whether these assurances will continue for in the future may end of being “case dependent.” Particularly aggressive industrial sources with large legal and engineering

¹⁵ OAC 3745-31-05(A)(3), Criteria for director issuing permit; note that the exception in the language cited goes to permits to install for voluntary emission reduction control efforts.

¹⁶ See Ohio EPA Division of Air Pollution Control, Engineering Section, Engineering Guide #1 (available at Ohio EPA’s web site)

¹⁷ Ohio EPA Division of Air Pollution Control, Engineering Section, Engineering Guide #42, December 30, 1982 (available at Ohio EPA’s web site)

departments could use provisions of the law to undermine the resolve of Ohio EPA permit engineers in making stringent best available technology decisions reflecting the unpromulgated engineering guide.

Ohio EPA publishes a database of its continuing “best available technology” (BAT) determinations in a Fox Pro database format.¹⁸ Detailed review of past BAT determinations is outside of the scope of this memo, but a cursory review indicates several toxic air pollutants being regulated for some (not all) of the sources indicated in the database. However, given the mixed messages of the statute and the rules in making BAT decisions, these Ohio BAT determinations should be examined in detail to determine whether they reflect stringent control decisions, weak control decisions or something in between.

The weakness of Ohio's BAT statutory provisions may also be an important consideration under the Clean Air Act's requirement for states to make “case by case” determinations of Maximum Achievable Control Technology (MACT) for the control of federally regulated hazardous air pollutants (HAPs). Under the Clean Air Act, if EPA has not issued a final MACT regulation for a source category, then the states are required to make case by case MACT determination pursuant to EPA's rules in permitting new and reconstructed sources.

The federal rules on “case by case” determinations contain provisions allowing states to defer to their own control technology requirements which, in the case of Ohio, can be quite weak if the Ohio statutes language is followed. This means that new and reconstructed emission sources of federally regulated hazardous air pollutants in Ohio may seek potentially more lenient control technology requirements during permit reviews.

3.2.3 Ohio's 1999 Proposed Rule Amendments Concerning Best Available Technology

In late August, 1999, Ohio EPA published a public notice proposing to remove 5 different provisions of the Ohio rules concerning Ohio best available technology determinations from the Ohio State Implementation Plan (SIP) under the Clean Air Act. Although the stated purpose of this action is to remove from the Ohio SIP provisions which are claimed by Ohio as not being necessary to comply with the Federal Clean Air Act, Ohio EPA's public notice on the proposal raises a number of substantial questions.

¹⁸ Download the file BAT.ZIP at <http://www.epa.ohio.gov/dapc/files/files.html>

Ohio EPA is responding to industry requests in this action since industrial groups don't want to have emission limitations representing Ohio BAT requirements to be included in operating permits under the Clean Air Act and thus be enforceable by EPA.

Ohio's public notice raises issues of whether the actual provisions of the Ohio BAT regulation are being removed in addition to the proposal to remove such provisions from the Ohio SIP. The public notices provides that its publication is pursuant to the Chapter 119.03 of the Ohio Revised Code which deals exclusively with proposed, revised and rescinded Ohio administrative rules. If the Ohio BAT provisions were rescinded in this way, the last provisions of authority in Ohio's air rules to regulate toxic air pollution with technology-based standards would be removed. The decision would affect the vast majority of permits to install granted in the state.

The public comment period is pending at this writing. A public hearing is scheduled for September 23, 1999 at Ohio EPA's offices in Columbus, although persons intending to testify are directed to pre-register to speak at the hearing by September 22, 1999. Written comments can be submitted by the close of business on September 24, 1999.

3.2.4 Ohio's Unpromulgated Guidance on Community Impacts from Toxic Air Pollution

Ohio EPA currently reviews the community ambient impact of new and modified sources in its permit to install program according to an unpromulgated policy summarized in a document posted at Ohio EPA's web site known as "Option A."¹⁹

This ambient review policy uses Threshold Limit Values (TLVs), which are guidelines on maximum recommended occupational exposure for workers in workplaces. TLVs are published by the American Conference of Conference of Governmental Industrial Hygienists (ACGIH). Many TLVs are specified for 8 hour time-weighted averages.

Under Ohio's ambient review procedure, a formula is specified to derive a Maximum Acceptable Ground-Level Concentration (MAGLC). For a source operated 24 hours a day and 7 days per week, the MAGLC is equal to the TLV/42 or 2.4% of a TLV. The 1/42 factor is derived from a proportionalizing method intended to adjust the 5 day a week 8 hour a day nature of the TLV occupational health guidance to the 24 hour per day, 7 day a week exposure pattern of the general public to a community toxic air pollution source. It also reflects a safety factor of 10 by which the TLV is adjusted to

¹⁹ Download the file OPTION_A.ZIP at <http://www.epa.ohio.gov/dapc/files/files.html>

account for the differences between generally health industrial workers and potential sensitive groups in the general population.

ACGIH will generally publish a short term ceiling value for instantaneous exposure or for short averaging times for airborne substances with severe pulmonary irritation or sensitizing effects. Ohio's policy does not base its decisionmaking on TLVs reflecting short term exposures (instantaneous maximum limits, or ten minute to one hour averaging times), except for a case by case exception for which there is no guidance in the policy.

Ohio's policy has no specified procedure for evaluating or limiting ambient effects of toxic air pollutants, which do not have published TLVs.

Ohio uses TLVs even for known and suspected environmental carcinogens. Ohio does not have a specific risk assessment procedure or maximum ambient standards for determining and limiting cancer risk from emissions of environmental carcinogens.²⁰

In June of 1994, Ohio EPA published a proposed revised policy on "review of new sources for air toxic emissions."²¹ This procedure would have implemented a risk assessment procedure and limited maximum predicted risks to one in 100,000. The proposed policy would also have decreased the MAGLC to 1.0% of the TLV. The policy would have declared a high "de minimus" value for carcinogenic emissions at 1.0 ton per year, except for 2,3,7,8 tetra-chloro-dibenzo(p)dioxin, which would have an astonishingly high "de minimus" value of 200 lbs per year. The June 1994 policy was never implemented and/or adopted but has remained posted for comment for the last several years.

²⁰ The Option A policy contains an example of using the TLV-related policy to regulate the ambient impact of cadmium emissions from a hazardous waste incinerator. The example indicates that a maximum ambient impact of 1.19 ug/M³, one hour average, is allowed for such a circumstance. This concentration would be equivalent to about 0.0952 ug/M³ on an annual average. By way of comparison, the one in a million risk-based concentration for cadmium in Michigan is 0.0006 ug/M³ on an annual average. As a result, the Ohio policy relying on TLVs in this circumstance would allow about 158 times the ambient concentration permissible in Michigan for the same circumstance or a cancer risk level of about 158 in one million from the ambient impact of such a hazardous waste incinerator cited in the example.

²¹ Download the file TOCISPOL.ZIP at <http://www.epa.ohio.gov/dapc/files/files.html>

3.3 Toxic Air Pollution from Existing Sources

3.3.1 In General

In general, Ohio air regulations do not contain any toxic air pollution requirements specifying minimum technology-based emission control controls or limiting community ambient impacts for existing sources (other than whatever is provided in the original and/or modified permits to install for such sources or from federal requirements).

There are no regulations which specifically limit emissions of persistent bioaccumulative toxicants for a wide variety of source categories. There are some existing medical waste incinerator regulations discussed below which do regulate persistent bioaccumulative toxicants and other hazardous air pollutants.

Sources of non-criteria pollutants, including toxic air pollutants, must have permits to operate. According to an Ohio EPA engineering guide:

“Similarly, an examination of the permit to operate regulation in OAC rule 3745-35-02 indicates that the same conclusion may be drawn. Any owner or operator of a source of air pollutants is required to submit applications for permit to operate and obtain either a permit to operate or registration status, unless specifically exempted under OAC rule 3745-35-05. OAC rule 3745-35-05 contains no specific exemption for non-criteria pollutant sources.”²²

Although permits to operate are thus required for existing toxic air pollution sources, there is no regulatory authority that would require operating permits to more stringently regulate such sources beyond what is provided in the original permit to install. For many older sources, there will either be no permit to install or the permit to install will not reflect a “best available technology” review that considered emissions of toxic air pollution. As a result, emissions of toxic air pollutants from older sources will frequently be uncontrolled, or the emissions will only reflect existing regulations based on criteria pollutant control for smog or airborne particles.

²² See Ohio EPA Division of Air Pollution Control, Engineering Section, Engineering Guide #1, September 11, 1979 (available at Ohio EPA's web site)

3.3.2 Weak Excess Emissions/Malfunction Rule Provisions

Emissions of toxic substances from many industrial processes can be very high during excess emission and malfunction episodes when emission control equipment breaks down, is turned off for maintenance or when there is an upset in an industrial process that causes uncontrolled or poorly controlled emissions. Unfortunately, Ohio's rules for reporting, managing and controlling such episodes are very weak and allow very significant emissions and a great deal of latitude for industrial dischargers.

Although Ohio EPA's rules require that sources doing scheduled maintenance on air pollution control equipment must shut down associated pollutant generating activities, the agency permits many lenient exemptions. Based on an allegation by the source that shutdown is "impossible or impractical," the owner/operator may request authorization to continue operating a process without operating the associated air pollution control equipment.^{23 24}

Sources having an unexpected breakdown of pollution control equipment must immediately notify an Ohio EPA district office. For malfunctions lasting more than 72 hours, the source must file a report but is still allowed to claim that shutting down the associated industrial process is "impossible or impractical".²⁵

4 Medical Waste Incinerators

In 1991, Ohio EPA issued a set of fairly stringent regulations designed for medical and infectious waste incinerators.²⁶ These rules require important operational and monitoring requirements for medical waste incinerators and set emission limitations for common pollutants, visible emissions, hydrogen chloride, arsenic, beryllium, cadmium, chromium, lead, mercury and nickel. The rules also set forth important pollution

²³ OAC 3745-15-06(A)(1-3), scheduled maintenance of air pollution control equipment

²⁴ As an example of the type of situation allowed under this rule, the writer is personally aware of a situation under this rule at a BP Amoco Chemical plant in Lima, OH where an acrylonitrile production process was allowed to operate with high emission during an outage of a scrubber offgas incinerator for several days at a time with full knowledge and permission from Ohio EPA.

²⁵ OAC 3745-15-06(B)

²⁶ OAC 3745-75-(01-06), medical and infectious waste incinerator standards

prevention measures designed to keep mercury, batteries and other toxic-containing materials out of such incinerators.

Under the rules, all such incinerators with a capacity of greater than 1,000 pounds of waste per hour were required to perform stack tests for chlorinated dibenzo-dioxins/furans by January 1, 1994. However, the rules do not contain emissions limitations for these chlorinated dioxin/furan compounds.

In the first part of 1999, Ohio EPA issued proposed revisions to the existing medical waste incinerator rules.²⁷ The agency also provided supplementary information describing how the rules were changing, a list of affected facilities and other materials.²⁸ According to Ohio EPA, the purpose of the revisions is to bring the Ohio regulations into closer conformance with EPA's rules on medical waste incinerators.²⁹

Ohio EPA admits that the proposed revisions will relax particulate emission requirements for large incinerators and make them more stringent for smaller incinerators. In addition, the revisions will drop certain emission testing requirements for toxic metals are being dropped in the proposal. Ohio EPA's background materials contain a more detailed discussion of the proposed rules. The public comment period on these rules ended on June 1, 1999, but the final revisions have not yet been published as of September 1, 1999.

²⁷ Available by download at <http://www.epa.ohio.gov/dapc/regs/374575dt.pdf>

²⁸ Available by download at <http://www.epa.ohio.gov/dapc/regs/file1.pdf>

²⁹ EPA's rules were recently remanded by the DC Circuit Court of Appeals in a challenge by the Sierra Club and the Natural Resources Defense Council.