Demonstration under Section 110(l) of the Clean Air Act for Removal of Low Reid Vapor Pressure (RVP) Fuel Requirements from Ohio’s State Implementation Plan (SIP)

Agency Contacts for this Project

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Ohio EPA held a public hearing in Middletown, OH on December 5, 2016, regarding the draft request to U.S. EPA for the removal of Low Reid Vapor Pressure (RVP) fuel requirements in the Cincinnati and Dayton areas from Ohio’s State Implementation Plan (SIP). This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on December 6, 2016.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment.

Overall Concerns

Comment 1: Comments were received from Ohio Petroleum Marketers & Convenience Store Association (OPMCA) supporting the proposed removal of low Reid Vapor Pressure (RVP) fuel requirements in the Cincinnati and Dayton areas. The full comment letter can be found at the end of this response to comments document. (Jennifer Rhoads, OPMCA)

Response 1: Thank you for your comments and support of the proposed removal of low Reid Vapor Pressure (RVP) gasoline requirements in the Cincinnati and Dayton areas.

Comment 2: Comments were received from Wright-Patterson Air Force Base (WPAFB) with concerns regarding the retirement of emissions reductions from WPAFB. WPAFB believes that Ohio EPA can only permanently retire emissions reduction credits (ERCs) pursuant to OAC Chapter 3745-111. WPAFB also believes such unilateral action against a Federal facility
only would be inconsistent with state and federal law, and suggests Ohio EPA instead discount the credits of all sources in the Dayton area proportionately. The full comment letter can be found at the end of this response to comments document. *(Ron Joyner, WPAFB)*

**Response 2:** Ohio EPA believes this action is consistent with state and federal law. While OAC Chapter 3745-111 provides a general structure for the retirement of ERCs, WPAFB has not in fact chosen to participate in the voluntary statewide ERC banking program regulated under OAC Chapter 3745-111. Therefore, the retirement of the emission reductions from WPAFB are not strictly governed by the provisions of OAC Chapter 3745-111. Even if OAC Chapter 3745-111 did govern the retirement of these emissions reductions, OAC rule 3745-111-02(D) allows the Director to reduce the amount of ERCs for purposes of attaining or maintaining the national ambient air quality standards or for the State Implementation Plan (SIP). The provision does not specify that the reduction would have to be uniformly applied. Rather, it merely requires the Director to exercise such authority through the SIP process prior to removing credits. This SIP process has been followed.

There are very limited options for other available credits in the Dayton area. The emissions reductions for these purposes must be quantifiable, permanent, surplus, enforceable and contemporaneous (i.e., for the purposes of a Clean Air Act (CAA) Section 110(l) demonstration, occurring within approximately one year before/after the anticipated cessation of the low RVP fuel program). These constraints severely limit the availability of emission reductions. Emission reductions were considered for retirement from other facilities in the Dayton area. However, the emissions reductions identified by Ohio EPA as meeting these criteria total only approximately 8 tons per year (TPY) among two other facilities; this is less than one-third of the reductions needed to remove low RVP in the Dayton area. By contrast, WPAFB has 46.27 TPY of emission reductions, only 30.27 TPY of which would have been permanently retired. This would have left WPAFB with 16 TPY of emissions reductions, whereas the other two facilities would have been left with no emissions reductions.

While Ohio EPA continues to believe it is not mandatory for all available emissions reductions in the Dayton area to be retired proportionately, we are revising our request to include retiring the emissions reductions of the other two sources in
the area. These two facilities have permanently shut down, and so the emissions reductions will be of no use to them for netting purposes. Further, as the Dayton area is currently in attainment, emissions reductions are not needed for offsetting purposes. Ohio EPA will retire the remaining reductions needed from WPAFB. Retiring the total credits from the other two shutdown sources will reduce the portion contributed by WPAFB to an amount even less than if the reductions were retired proportionally.

End of Response to Comments
OHIO ENVIROMENTAL PROTECTION AGENCY  
DIVISION OF AIR POLLUTION CONTROL  

COMMENTS OF THE OHIO PETROLEUM MARKETERS & CONVENIENCE STORE ASSOCIATION  
ON THE DEMONSTRATION UNDER SECTION 110 OF THE CLEAN AIR ACT FOR REMOVAL OF LOW REID VAPOR PRESSURE (RVP) FUEL REQUIREMENTS FROM OHIO’S STATE IMPLEMENTATION PLAN (SIP)  

December 6, 2016  

The Ohio Petroleum Marketers & Convenience Store Association (OPMCA) is the statewide trade association in Ohio representing more than 500 independent, small businesses in the petroleum and convenience industry. OPMCA members employ more than 103,000 Ohioans and own and operate an overwhelming majority of the convenience stores in the state. Members on the wholesale side of the industry employ thousands more in commercial fueling facilities, transportation divisions, heating oil sales, and home offices. Convenience stores are America’s fueling stations. Convenience stores sell the majority of the gasoline purchased in the country—approximately 80 percent of all fuel sold in the United States. Ohio’s 6,240 convenience stores sell 6.4 billion gallons of motor fuel annually.

Over a decade ago, Ohio EPA promulgated rules to require Low Reid Vapor Pressure gasoline from June 1 through September 15 in the counties in and around the Cincinnati and Dayton area. Specifically, the administrative rules prohibit a refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer from selling, offering for sale, dispensing, supplying, offering for supply, or transporting (for use in a Low RVP control area) gasoline that has a RVP exceeding 7.8 PSI during the control period, June 1 through September 15, each year. Ohio EPA elected to impose the requirement for Low Reid Vapor Pressure gasoline in southwest Ohio to replace air emissions reductions associated with the E-check program. At that time, both the agency and product manufacturers contended that the Low Reid Vapor Pressure gasoline required in these counties would cost only $0.01 to $0.03 per gallon more than the conventional gasoline sold in all other parts of the state.

When the rules mandating Low Reid Vapor Pressure gasoline were reviewed pursuant to state law in 2015, Ohio EPA again asserted there was only a nominal price differential between conventional gasoline and Low Reid Vapor Pressure gasoline. In fact, Ohio EPA contended in the Business Impact Analysis submitted to the Ohio Common Sense Initiative Office in April 2015 that “the price of Low Reid Vapor Pressure gasoline will cost approximately $0.01 to $0.03 more per gallon.” Furthermore, the agency asserted the increased cost of a gallon of gas would be “reasonably low and the total annual cost would be a function of how much gas is purchased.”

While the agency’s assertions about the gasoline price differential may have been accurate when the rules were initially promulgated, today they fall far short. Over the course of the last several years, the
cost of Low Reid Vapor Pressure gasoline has escalated dramatically. By way of example, a survey of convenience retailers in the greater Cincinnati area in July 2015 revealed that the wholesale price for Low Reid Vapor Pressure gasoline peaked at $0.36 per gallon higher than the wholesale price of conventional gasoline. According to a leading petroleum analyst, during the 2015 ozone season, the average wholesale price for Low Reid Vapor Pressure gasoline exceeded the average wholesale price for conventional gasoline by nearly $0.30 per gallon. Motorists in the greater Cincinnati area, then, paid a minimum of $0.20 per gallon more on average for gasoline last summer. Said another way, the air emissions reductions derived from the Low Reid Vapor Pressure gasoline requirements cost Cincinnati area motorists tens of millions of dollars in 2015.

Consumers are not the only ones who may suffer. In the hyper-competitive retail fuel market, the increased wholesale price may be borne by the retailer. For small businesses who lack the buying power and access to pricing discounts enjoyed by larger competitors, the additional cost can be devastating. As the lifeblood of Ohio’s economy, the viability of small business directly affects the viability of the local community.

Over the last several years, OPMCA has voiced its opposition to the requirement for Low Reid Vapor Pressure gasoline with Ohio EPA, and continually questioned the need for special fuel at all. The association encouraged the agency to explore other control strategies that would derive comparable air emissions reductions without penalizing the motoring public or convenience retailers. As a result, Ohio EPA conducted comprehensive analyses and ascertained that the fuel requirements are no longer warranted in Ohio to meet the National Ambient Air Quality Standards (NAAQS) for ozone.

Because of recent environmentally-friendly emissions reductions projects at southwest Ohio businesses, Ohio EPA determined it is able to eliminate this arduous requirement without jeopardizing the air quality in our state. In fact, according Ohio EPA’s recent analyses, “more than adequate surplus emissions are available to offset the cessation of the Low RVP fuel requirement.”

With that in mind, the agency has petitioned U.S. EPA to eliminate the requirement from Ohio’s State Implementation Plan prior to the Low RVP control period, beginning June 1, 2017.

OPMCA supports this request from Ohio EPA Director Craig Butler regarding the removal of Low Reid Vapor Pressure fuel requirements in the Cincinnati and Dayton areas. In this request, Director Butler reinforces Ohio EPA’s commitment to protecting the environment and ensuring our state enjoys continued air quality achievements, while also safeguarding Ohio motorists and small businesses from unnecessary financial burdens.
5 December 2016

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Dear Ms. Kaloz

Thank you for the opportunity to comment on Ohio EPA’s draft request to U.S. EPA for the removal of Low Reid Vapor Pressure (RVP) fuel requirements in the Cincinnati and Dayton areas from Ohio’s State Implementation Plan (SIP). I serve as the United States Air Force Regional Environmental Coordinator (REC) for Federal Region 5, which includes the state of Ohio. My responsibilities include representing the Air Force in Federal Region 5 in dealings with federal, regional, state, and local environmental regulatory agencies. Accordingly, I submit the following comments on behalf of the Air Force.

On 12 Oct 16, Ohio EPA sent a request to Wright-Patterson Air Force Base (WPAFB) requesting WPAFB donate to the State 30.27 tons of Nitrogen Oxide (NOx) emissions reduction credits (ERC) that were banked under Ohio EPA’s emission banking program. The 30.27 tons of NOx are the result of a conversion of the WPAFB power plant from coal-fired to natural gas. Ohio EPA would use the allowance to remove the RVP fuel program in the Dayton area. While WPAFB’s response to this request was pending, Ohio EPA submitted for public comment a draft request to U.S. EPA to remove the RVP fuel requirements in Dayton from the SIP, based on the permanent retirement of excess NOx ERCs from WPAFB.

The Air Force is concerned that Ohio EPA intends to involuntarily retire WPAFB’s ERCs. We believe that such unilateral action by Ohio EPA against a Federal facility only would be inconsistent with state and federal law. The Ohio ERC Program authorizes Ohio EPA to forfeit or discount allowances to meet the requirements of the SIP, but Ohio EPA’s apparent intent to extract the allowance from WPAFB does not appear to comply with state regulations under either the forfeiture or discounting provisions.

Under OAC 3745-111-03(E), forfeiture is authorized under certain conditions when a “contaminant source or facility permanent shutdown” results in ERCs. The power plant at
WP AFB continues to operate with a different fuel source, so forfeiture does not appear to be an authorized option under Ohio rules. Ohio EPA is also authorized to "discount" allowances under the provisions of OAC 3745-111-02(D) for the purpose of meeting requirements of the National Ambient Air Quality Standards (NAAQS) or the SIP. Since the state is proposing a change to the existing SIP to change the automobile fuel requirement, application of the procedures outlined in OAC 3745-111 are available to the state; however, it appears the state is not exercising these authorities consistent with OAC 3745-111. If the procedures for forfeiture or discounting were exercised as set forth in OAC 3745-111, such a reduction to meet the state's requirements could be met without raising the issue of inconsistent treatment of a Federal facility. An extraction of the allowance from WP AFB does not appear to be authorized under this provision either, as the 30.27 tons Ohio EPA needs to retire for its SIP change would have to be uniformly applied.

Additionally, under the federal facilities provision of the Clean Air Act (CAA), federal facilities must comply with "all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity" (42 U.S.C. § 7418(a)). This language manifests a Congressional intent that federal agencies share the same regulatory burden for reducing air pollution as similarly situated private entities. Where a state requirement for the control and abatement of air pollution even-handedly regulates public and private entities, federal agencies are obliged to comply. By removing ERCs from WP AFB's inventory alone, and by not involving other private entities in the Dayton area in a proportionate manner, it appears Ohio EPA would be singling out the Air Force for disparate treatment.

There are available credits from private entities in the Dayton area that Ohio EPA has elected not to use. Ohio EPA could use the procedure available for discounting the credits of all sources in the Dayton area proportionately. Such a discounting procedure would be non-discriminatory and would ensure that there is no issue of discriminatory treatment of the federal government.

CAA § 110(l) [42 U.S.C. § 7410(l)] requires SIP revisions to be consistent with all applicable CAA requirements. The Air Force is concerned that if Ohio EPA involuntarily retires WP AFB's ERCs solely to meet the requirements for this SIP proposal such action would be inconsistent with CAA § 110(l) because it would violate the sovereign immunity provisions of CAA § 118(a), which is an applicable requirement of the Clean Air Act.
Thank you for your attention to these comments. Regardless of the ultimate disposition of WPAFB’s ERCs, the United States Air Force remains committed to stewardship of the environment and protecting the safety and health of the people of Ohio. If you have any questions or would like to discuss this matter, please contact me at 678-655-9532 or ronald.joyner@us.af.mil.

Sincerely,

For:

RON JOYNER
Acting Air Force Regional Environmental Coordinator
Federal Region 5