

February 14, 2025

Christina Yoka
Chief of Air Pollution Outreach
Cleveland Department of Public Health
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RE: Draft Proposed Cleveland Air Pollution Code

Dear Chief Yoka:

The Northeast Ohio Regional Sewer District (NEORSRD) appreciates the opportunity to review and comment on the City of Cleveland Division of Air Quality's (CDAQ) preliminary recommendations on the revised Title V: Air Pollution Code released for review on January 14, 2025. NEORSRD is a ratepayer-funded political subdivision of the State of Ohio responsible for wastewater treatment facilities, regional stormwater management, and interceptor sewers across Cleveland and 62 suburban communities. NEORSRD's mission is to provide progressive regional management of sewage and stormwater that protects the environment and serves our community. As a regional sewer district with two large wastewater treatment plants and other, smaller facilities within the City of Cleveland, including sources that are subject to Title V, we are an interested stakeholder in the proposed changes.

NEORSRD supports the CDAQ's efforts to revise its air code to address the impacts of environmental stressors in the areas of the City that are most vulnerable to the health impacts of air pollution. This approach aligns with NEORSRD's core values and our water-quality-based mission. NEORSRD is concerned that the proposed changes do not provide sufficient clarity for regulated entities and thus may hinder progress under this code. Further, some of the provisions conflict with or duplicate regulations in state and federal air law. NEORSRD strongly encourages CDAQ to engage a stakeholder group including the regulated community to refine the proposed changes and establish clarity on the regulatory requirements. In addition, NEORSRD offers the following specific comments for CDAQ's consideration.

I. New Application Requirements

The proposed changes to Chapter 257 include new application requirements for new sources and modifications to existing sources, which appear to require more information than currently required. NEORSRD requests clarification on the format of and the additional information that will be required for applications. NEORSRD also requests the opportunity to work with CDAQ during the development of the new applications. In addition, NEORSRD requests clarification on potential conditions that can be expected in new permits that would result from this code update.

II. Cumulative Impact Assessment

Chapter 257.01(e) states that CDAQ will develop and issue an Air Quality Health Impact Report that identifies areas within the City with the "most vulnerability to the health impacts of air pollution." However, the details of how those scores are determined are not clear. It is also not clear whether there will be an opportunity for the regulated community to review those determinations and offer comments. Transparency in the

methodology and calculation of scores is needed given the added code requirements tied to the score. Again, NEORSD lauds the City for the concept, but the details are important to the regulated community.

In addition, this chapter requires a Health Impact Assessment, which includes an epidemiological relative risk assessment, for new or modified sources located within areas with the highest relative ranking in the Air Quality Health Impact Report. NEORSD requests more information about what the City expects for these and other submittals to understand the regulatory burden of these proposed requirements. It appears that these additional requirements are potentially complex and expensive to complete. As such, facilities that plan to undertake minor changes or install new equipment that only marginally increase air pollutant emissions should be exempt from this requirement. Therefore, NEORSD requests that CDAQ develop de minimis emission levels or emission thresholds that would need to be exceeded to require the completion of a Health Impact Assessment. NEORSD offers its assistance to work with a CDAQ stakeholder group to develop appropriate de minimis thresholds.

NEORSD also requests clarification on how CDAQ intends to use Health Impact Assessments in the evaluation and determination of permits.

III. Add an Exemption for Projects with a Demonstrated Public Need

NEORSD recognizes and applauds CDAQ's commitment to identify and address the most vulnerable areas of the City by assessing "social vulnerability index scores, health data, and environmental data." This is important work that aligns with NEORSD's core values and is an air-focused mirror of our water-quality-based mission of providing progressive regional management of sewage and stormwater that protects the environment and serves our community.

As a ratepayer-funded public utility responsible for wastewater treatment facilities, regional stormwater management, and interceptor sewers, our operations and capital improvement projects inherently have a demonstrated public need. Ohio EPA defines public need as *"an activity or project that provides important tangible and intangible gains to society, that satisfies the expressed or observed needs of the public where accrued benefits significantly outweigh reasonably foreseeable detriments."*¹ Using Ohio EPA's definition, it is reasonable to provide an exemption to certain elements of the new proposed requirements such as air modeling, community engagement plans, epidemiological relative risk assessments and vehicle emissions calculations for projects with a demonstrated public need. CDAQ should also take into consideration that the cost of these requirements for public utilities like NEORSD will be borne by ratepayers, including the residents of the most vulnerable areas of the City.² Therefore, NEORSD respectfully requests that CDAQ provides an exemption from certain additional requirements in the proposed Air Pollution Code for public entities performing projects with a demonstrated public need.

IV. Conflicts with or Duplicate Regulations in State or Federal Law

In its review of the proposed changes, NEORSD identified new and revised sections of the Air Pollution Code that are inconsistent with or duplicative of existing state or federal regulations. NEORSD would like to understand CDAQ's rationale for proposing regulatory definitions that differ from existing state or federal regulations. The following are some examples.

A. Definition of Source

NEORSD seeks clarification on the proposed definition of "source" in Section 251.67. The current definition of source (i.e., "any building, structure, facility, operation, installation, other physical facility or real or

¹ Ohio Administrative Code 3745-1-50.

² Preliminary cost estimates for a Health Impact Assessment are between \$40,000 and \$200,000.

personal property which emits or may emit any air pollutant”) is clear and easily understood and is generally consistent with “source” under state and federal regulations. The proposed definition expands the term to include “the cumulative impact from, or exposure to, a chemical source of air contamination combined with the impacts from a non-chemical stressor, including stressors that can aggregate and accumulate over time, affecting health and well-being.” NEORSD requests that CDAQ clarify the intent of these changes and clarify the definition.

B. Definition of Hazardous Air Pollutants

The proposed changes include a new definition for Hazardous Air Pollutant (HAP) in section 251.36 and a designation of Hazardous Air Pollutants in Section 281.01. These definitions do not align with the existing definition of HAPs in Section 112 of the Clean Air Act or the Ohio Revised Code. The new section 251.36 is significantly broader than the federal definition of HAPs and lacks clarity making it difficult for a regulated entity to know what pollutants are encompassed by the new definition. NEORSD suggests that CDAQ align its definition of HAPs with the existing definitions in Ohio and federal law and ensure that its uses throughout its code are consistent with the existing regulatory definition.

Additionally, the Clean Air Act and Ohio’s state implementation plan, including its Air Toxics rules, already heavily regulate HAP emissions through statutory requirements based on determinations of those specific HAPs and major or area sources of HAPs that present a risk to human health and the environment. Significant rulemaking was involved with respect to both the state and federal HAP programs, with detailed health effects analyses as well as cost-benefit considerations. Having a third regulating authority evaluate similar emissions potentially creates confusion and potential conflict. For example, if a facility is undergoing modeling under Ohio EPA and/or U.S. EPA supervision, it is unclear how a separate city modeling effort contributes to the goal of protecting public health. We also note that, because the City of Cleveland acts as delegated agent of Ohio EPA for facilities located in Cuyahoga County, the potential for confusing and conflicting directives is compounded.

C. Visible emissions

NEORSD seeks clarification on what constitutes visible emissions as defined in the proposed air code, and how they will be regulated differently than state or federal code.

D. Fleet Vehicles

The new air code suggests that facilities would need to provide information regarding fleet vehicles, including vehicle miles traveled, emissions, and a plan to reduce pollutants from vehicle operations. These changes appear to combine mobile and stationary sources under the same regulatory structure. Under the Clean Air Act, stationary and mobile sources are regulated very differently. For stationary sources, the state and federal agencies regulate particulate emissions associated with the paved and unpaved surfaces on which vehicles travel. Mobile sources are regulated via numerous rules applicable to engines. Currently, Ohio EPA does not consider on-road vehicles as an emission source subject to permitting. The new air code appears to treat mobile sources as if they were stationary sources, but perhaps that is not the intent. NEORSD respectfully requests clarification on how CDAQ intends to use vehicle emission calculations in the permit determination process and how fleet vehicles would be regulated.

V. Costs to the Regulated Community

As a long-regulated entity, NEORSD recognizes that the cost of compliance cannot be measured in regulatory fees alone. As noted above, additional costly requirements could potentially include air modeling, vehicle emissions calculations, and Health Impact Assessments. NEORSD seeks clarification from CDAQ on the evaluation of cost impacts to the regulated community from the proposed application changes and the costs of permit compliance.

In addition, Section 263.02 (Fees for Permits to Install) appears unfinished. The revised code simply reads "pending determination of PTI fees." NEORSR requests clarity on the changes that CDAQ envisions for these fees.

VI. CDAQ's Role as Representing BOTH the City of Cleveland and Ohio EPA

NEORSR seeks clarification on how CDAQ staff plan to represent both the State of Ohio and the City of Cleveland during inspections and stack testing, and how fees will be assessed. The proposed code indicates that there will be new CDAQ Intent to Test (ITT) forms for facilities wishing to conduct stack tests. NEORSR requests the opportunity to work with CDAQ in the development of these forms to ensure consistency with Ohio EPA ITT requirements.

NEORSR appreciates the Cleveland Division of Air Quality's consideration of these comments. As noted above, NEORSR strongly encourages CDAQ to engage a stakeholder group, including NEORSR, to refine the proposed changes and establish clarity on the regulatory requirements. As a regulated entity, NEORSR respectfully requests advanced notification prior to the effective date of the new code to ensure adequate time to prepare for compliance with the new requirements. Lastly, NEORSR requests a meeting to further discuss these comments and will be in contact to set one up. In the meantime, should you have any questions or concerns, please do not hesitate to contact our Manager of Environmental Compliance, Sarah Andersson, at anderssons@neorsd.org or (216) 881-6600, extension 6442.

Kind Regards,



Kyle Dreyfuss-Wells
Chief Executive Officer

cc: David Hearne, Commissioner of Air Quality, City of Cleveland
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