

Transition – A Presidential Change Update

February 2025

U.S. EPA Revives Ohio's Air Nuisance Rule Despite Regulatory Freeze

Key Notes:

- The U.S. EPA returned the Air Nuisance Rule (ANR) to the Ohio SIP effective February 20, 2025, which was removed by U.S. EPA in 2020.
- This regulatory action will allow private citizens to enforce the ANR through the CAA citizen suit provision.
- This rule may be subject to further scrutiny by the Trump Administration due to President Trump's recent executive order freezing new regulations.

On January 20, 2025, the Trump Administration issued a regulatory freeze order requiring the U.S. EPA, along with other federal agencies, to refrain from proposing or issuing new rules until approved by the new administration. The order also directed agencies to consider postponing for sixty (60) days any rule already published in the *Federal Register*. However, the U.S. EPA's reinstatement of the Air Nuisance Rule (ANR) into the Ohio State Implementation Plan (SIP) narrowly avoided this scrutiny, as it was finalized just one day after the regulatory freeze order took effect. The reinstatement of the ANR into Ohio's SIP could have significant implications for Ohio industries, as it authorizes enforcement of the ANR through citizen suits under the Clean Air Act (CAA).

Under the CAA, states must submit SIPs identifying regulations to achieve compliance with the National Ambient Air Quality Standards (NAAQS) established by U.S. EPA. By reinstating the ANR into Ohio's SIP, the rule will become incorporated into Ohio air permits. These permit conditions can be enforced by the U.S. EPA and the Ohio EPA, and if these agencies do not prosecute a claim, private

citizens can pursue enforcement under the CAA lawsuits if regulatory agencies decline to take action.

The ANR, codified as Ohio Administrative Code (OAC) 3745-15-07), prohibits persons from creating or maintaining "air pollution nuisances." These nuisances are defined as emissions of "smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors," or similar substances in quantities that "endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property." A version of the ANR was previously included in Ohio's SIP since 1974. However, during the first Trump Administration, the U.S. EPA removed the ANR from the Ohio's SIP because Ohio did not rely on it to demonstrate compliance with the NAAQS—making it unnecessary under the CAA. This removal of the ANR from the Ohio SIP eliminated the ability of private citizens to file air nuisance claims in Ohio under the CAA, although OAC 3745-15-07 remained enforceable as a state law by Ohio authorities.

In 2021, environmental groups challenged the U.S. EPA's decision to remove the ANR, eventually prompting the Biden Administration to request and obtain a voluntary remand of the decision for further agency review.

The reinstatement of the ANR into Ohio's SIP became effective on February 20, 2025. However, given its issuance just one day after President Trump's regulatory freeze order, further review by the U.S. EPA remains a possibility. In the meantime, the ANR's inclusion in Ohio's SIP increases the risk of citizen suits, as its requirements will now be incorporated into Ohio air permits.

FOR MORE INFORMATION

For more information, please contact:

Devin A. Barry

216.566.5854

Devin.Barry@ThompsonHine.com

Ashley Kirk

216.566.5585

Ashley.Kirk@ThompsonHine.com

or any other member of our [Environmental](#) practice.

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