

October 2, 2006

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Rep. Keith Faber, Vice-Chair
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Joint Committee on Agency Rule Review
Ohio General Assembly
Columbus, OH

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Re: OH EPA Rule 3745-21-07 – Item 41 on the JCARR agenda for October 10, 2006

On behalf of the more than 150 composite manufacturing companies with operations in Ohio, the American Composites Manufacturers Association submits the attached comments regarding OH EPA's proposed revisions to Rule Number 3745-21-07, Control of organic materials from stationary sources. OH EPA's proposed revised rule appears as Item 41 on the agenda for the October 10, 2006 JCARR meeting.

The proposed revised rule should be returned to OH EPA, without legislative approval, to correct certain defects as discussed in our comments.

Among other needed changes, as a priority OH EPA must establish practical emission quantification methods for SMC manufacturing operations. Without a clear understanding of and agreement on the methods which may be used to reliably measure or estimate emissions from these operations, arguments regarding the applicability of 3745-21-07 to this industry will continue. SMC manufacturers may continue to face unpredictable challenges to their emission reports and permits, and may unfairly and mistakenly be required to install control equipment. Without relief, there could be significant negative impacts to economic activity and employment.

We stand ready to assist OH EPA in establishing appropriate emission measurement procedures, and addressing the other recommendations included in our comments.

Sincerely,



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**Comments of the American Composites Manufacturers Association
on Ohio EPA's Proposed Revisions to Ohio Administrative Code 3745-21-
07 "Control of Organic Emissions from Stationary Sources"**

I. Introduction and Summary

The American Composites Manufacturers Association ("ACMA") is pleased to comment on Ohio EPA's proposed revisions to Ohio Administrative Code (OAC) 3745-21-07. OAC 3745-21-07 is the basic Ohio regulation for the control of organic air emissions from stationary sources.

ACMA is the trade association of the composites fabrication industry. ACMA's over 900 members operate many plants in Ohio. Those plants make an important economic contribution to their communities and to the State as a whole. Since all these plants are potentially subject to OAC 3745-21-07, ACMA has a continuing interest in this rule.

Recently, Region V of U.S. EPA has claimed that emissions tests on sheet molding compound (SMC) manufacturers show that these molders are not exempt from control requirements under OAC 3745-21-07 as everyone had long believed, and that they should therefore be required to install 85% effective controls across the board. ACMA was concerned that Ohio EPA's revisions to this regulation might reflect that approach.

However, the most recent draft of Ohio's proposed amendments and supporting documents, released on September 8, has largely removed these concerns. The amendments properly reject Region V's claim that widespread noncompliance has been demonstrated, and set out a reasonable way to set control requirements where noncompliance might exist. However, they do not establish the practical emissions quantification methods that may be needed to determine the applicability of OAC 3745-21-07 to our industry. Our comments suggest steps toward establishing such methods.

We also believe that Ohio EPA could defuse this entire controversy by shifting composites regulation from OAC 3745-21-07 to an industry-specific RACT standard that would make OAC 3745-21-07 inapplicable. Since Ohio EPA has already concluded that EPA's MACT standards reflect the strictest reasonable controls for our industry, such a rule would be easy to establish.

Our discussion follows. We begin with the emissions quantification issue, and then discuss the consequences of non-compliance and the use of a RACT standard that would make OAC 3745-21-07 inapplicable. We end with a word on a different issue, namely the applicability of OAC 3745-21-07 to compression molders.

II. Ohio EPA Should Establish Methods for Quantifying the Application of OAC 3745-21-07 to SMC Sources

A. Introduction

OAC 3745-21-07(G)(2) requires units that emit more than 8 pounds per hour or more than 40 pounds per day of organic compounds to either install controls or demonstrate under G(9)(g) that controls are technically infeasible and/or not cost-

effective. Both facility owners and Ohio regulators have long concluded that emissions from SMC machines fall below these limits because either (1) potential emissions do not exceed 8/40 thresholds, or (2) actual emissions have not exceeded permit-imposed 8/40 limits. These conclusions are based on use of emission factors documented by owners and accepted by OEPA during review of permit applications.

However, Region V of US EPA is now requiring an increasing number of these operations to validate their emission factors using complex and costly procedures to capture emissions in a temporary total enclosure (TTE). ACMA believes that the protocols for these tests, particularly those governing the performance of the TTE, may produce artifacts that substantially bias test results when applied to SMC machines.

The Region, based on the results of a single day of testing, is also revising emission factors and projecting compliance with 8/40 limits retrospectively to support enforcement actions. ACMA believes that even if test results were unbiased, a single test would be clearly insufficient to derive a new emission factor for such purposes.

ACMA and its members believe that a “mass balance” approach would be **both** more practical **and** yield more accurate and far more comprehensive results. Only mass balance studies can be affordably conducted across a sufficient range of test conditions to develop truly predictive emission factors for SMC machines. To date Region V has not meaningfully considered this alternative.

B. OAC 3745-21-07 Needs Defined Emissions Quantification Procedures, but the Proposed Revision Does not Provide them for SMC Facilities.

1. Emissions Quantification

Ohio EPA, Region V, and ACMA all agree that a responsible regulatory program must define exactly how to determine compliance with the numerical limits and thresholds of that program. That defined approach could consist of emissions factors, tests of emissions surrogates, direct emissions tests, or some combination of these approaches.

Without such a defined approach, the meaning and stringency of the standard will be analytically indeterminate. In practice, its meaning and stringency will vary from time to time and place to place, some sources will be treated unfairly, and some violations of standards may go uncorrected.

Ohio EPA, in proposing its amendments to OAC 3745-21-07, identified “the lack of definitions for some regulatory terms, the lack of compliance test methods, the lack of clearly written exemptions ...and the resulting ambiguities and divergent applications” as problems requiring correction, particularly in the provisions that govern SMC operation. White Paper pp. 10, 11. Ohio EPA said:

The resolution of issues associated with the lack of certain definitions, the lack of clearly described exemptions, or the lack of test methods can evolve into different applicability determinations and different limits for similar operations when the resolution is conducted principally as site-specific determinations by air permit review staff located in the various offices and agencies throughout Ohio.

id. at 11.

Unfortunately, in the case of SMC facilities the proposed revisions would not correct the problems that the White Paper identifies, since they do not specify any

practical means of emissions quantification for these facilities. Although the proposed revisions would retain the 8/40 control exclusion for SMC facilities, they say nothing about how to determine whether a facility is over or under that limit. The proposed revisions would incorporate the Ohio compliance test methods and procedures set out in OAC 3745-21-10, but that section does not address this point either.

Our current controversies are directly caused by this lack of definition. In particular, Region V's demand for total enclosure tests to determine whether facilities comply with the 8/40 limit could sound plausible only in a system that had failed to define its basic emissions quantification rules. Such tests are far too expensive to be used regularly for 8/40 threshold determinations, quite apart from their manifold technical defects. A regulatory system with integrity would define a workable process that sources and agencies could actually use for making 8/40 determinations, and then explain the role (if any) of more elaborate tests in supplementing it. Without such a framework, the use of total enclosure tests can only become a game of "gotcha" used to produce results that have no relation to the quantification methods used in good faith to make the initial applicability determination.

2. Potential to Emit

The proposed revisions also raise an unaddressed conceptual problem. They would retain the 8/40 limit, but tie it to a source's "potential to emit". The meaning of that term is far from obvious when applied to a source like an SMC facility that can use a wide variety of materials to make a wide variety of products, all with different

emissions profiles. The “potential to emit” approach could lead to unrealistic results if agencies used a very rare, or commercially impractical, input-product combination with a high emissions profile to define “potential to emit”.

We would be happy to work with Ohio EPA to resolve these ambiguities.

C. The Need for a Process to Establish Quantification Procedures

1. Emissions Quantification

The quantification procedures used to implement a rule largely define what the rule means, the cost of compliance, and the degree of emission reduction achieved. That makes these procedures integral parts of the rule. ACMA believes that these procedures must therefore be established by the same open, transparent process as other rule provisions.

The alternative, which we see in process now, is a tug-of-war over quantification approaches that is not transparent, has no objective decision-maker, and is conducted on a case by case basis in a potentially adversarial enforcement context. This is not the best way to arrive at technically sound conclusions. Moreover, such an approach to regulatory decisions is neither fair nor legally acceptable. See Bethlehem Steel Corp. v. EPA, 638 F.2d. 994 (7th. Cir. 1980).

III. Ohio EPA Should Make Clear the Compliance Requirements for SMC Compounding Operations Found to Exceed the 8/40 Level

A. The Region V Position

The tests EPA Region V has ordered on SMC compounding facilities have been completed for only three SMC machines at two facilities that ACMA is aware of.

Nevertheless, Region V is already claiming that not only did at least one facility with completed tests violate the 8/40 limit, but also that “it is likely” other sheet molding compound operations exceeded it as well. Region V argues further that its data shows that 85% control of SMC compounding operations is feasible, and that Ohio EPA should amend OAC 3745-21-07 to provide automatically for such controls.

B. The Ohio EPA Position

As we understand the most recent regulatory documents, Ohio EPA has responded as follows to Region V’s assertions.

1. Emissions between facilities are so variable that no judgment of non-compliance for the entire industry can be based on tests on individual facilities.
2. Should a facility be found in non-compliance as a result of such individual tests, 85% control will not be automatically required. Instead, the facility will be allowed to apply for an alternative limit as under present law.
3. The record shows that add-on controls are **not** generally a reasonable control approach for SMC manufacturing. Instead, EPA’s composites MACT standard defines the reasonable approach.
4. No penalties would be appropriate or assessed against sources that had believed in good faith they were not covered by OAC 3745-21-07 but were shown by site-specific tests to emitting above its exemption thresholds.

See Responsiveness Summary pp. 14, 17, 19, 29, 35-37, 45.

ACMA endorses each of these positions as legally and technically sound and urges Ohio EPA to express them definitively in the final rule. Should Ohio EPA change position on any of these points, ACMA requests notice and an opportunity to respond to that changed position.

IV. Ohio EPA Should Establish an Industry –Specific RACT Standard for Composites Fabrication that Would Make OAC 3745-21-07 Inapplicable

OAC 3745-21-07 does not apply to sources subject to a separate regulatory RACT standard. As noted earlier, Ohio EPA has **already** concluded that EPA’s composites MACT standard imposes controls on the composites industry that are fully acceptable as RACT. See 68 Fed. Reg. 19375 (April 21, 2003). Against this background, there is little point in making composites fabrication sources go through case-by-case determinations of OAC 3745-21-07 applicability, since even if they are found subject to that regulation, that will result only in reaffirming a regulation to which they are already subject. We urge Ohio EPA to seriously consider establishing a separate RACT standard under OAC 3745-21-09 for composites fabrication that would avoid this result. ACMA would be pleased to work with you on such a regulation.

V. Ohio EPA Should Confirm that OAC 3745-21-07 Does Not Apply to SMC Molding.

Ohio EPA has recently and correctly concluded that OAC 3745-21-07 does not apply and has never applied to the molding of SMC because this process does not use “liquid organic materials” as the regulation requires. See OAC 3745-21-07(G). However, OEPA permit writers have in the past incorrectly imposed limits on SMC

presses under section G(2) of this rule. The proposed rule changes would rescind limits set to enforce G(2) under the original rule. However, we are concerned that this action might not cover limits on SMC presses because those erroneously imposed limits do not really enforce G(2) at all. **ACMA requests Ohio EPA to include within the rule explicit language clarifying that (i) the provisions of G(2) never applied to the molding of SMC and (ii) notwithstanding that fact, permit terms and limits erroneously imposed to enforce G(2) in permits on SMC presses are also rescinded by the new rule.**

VI. Conclusion

For the reasons given above, ACMA urges Ohio EPA to drop the special provisions covering SMC manufacturers from its proposed revision of OAC-3745-21-07 and to develop instead a separate RACT standard for these manufacturers that would be based on EPA's MACT standard and promulgated under OAC 3745-21-09.

Should Ohio EPA reject this comment and include SMC manufacturers in OAC-3745-21-07, either permanently or pending the development of a RACT rule, we urge the agency to develop a practical mass balance test method that can be used to implement OAC-3745-21-07, and to make clear that any plant with an SMC machine found to emit more than 8 pounds of OC per hour or 40 pounds of OC per day will be allowed to seek alternative emission levels and will not be automatically subject to 85% control.

We are prepared to work actively with Ohio EPA to assist in the implementation of these recommendations.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'John Schweitzer', with a stylized, cursive script.

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