

**Comments of the American Composites Manufacturers Association
on EPA’s Proposed Emissions Standards for Paint Stripping and
Miscellaneous Surface Coating Operations at Area Sources, 72 Fed. Reg.
52958 (Sept. 17, 2007), Docket I.D. EPA-HQ-OAR-2005-0526**

I. Introduction and Summary

On September 17, 2007 EPA published in the *Federal Register* proposed control requirements for hazardous air pollutant (HAP) emissions from small paint stripping, auto body refinishing, and plastic parts coating operations. These proposed rules would apply **only** to “area sources,” which emit less than ten tons a year of any single HAP and less than 25 tons a year of all HAPs together. EPA proposed this rule to carry out its “urban air toxics strategy”, which requires EPA to control categories and subcategories of area sources with significant emissions of 30 designated HAPs. See Clean Air Act (CAA) §§112(c)(3); 112(k)(3)(B)(ii).

The American Composites Manufacturers Association (“ACMA”) is the national trade association representing over 900 member companies in the composites (reinforced plastics) industry. ACMA’s membership includes composite manufacturers (fabricators), suppliers, distributors, academics and others with an interest in the composites market. Many of our members operate small businesses that would be subject to the plastic parts coating provisions of the proposed rule.

The rule EPA has proposed is really three rules under one label, since it covers three very different types of operations in three separate regulatory categories, namely paint stripping, auto body refinishing, and plastic parts coating. Plastic parts coating is by far the least significant. EPA estimates that 39,000 facilities will be subject to

this rule. Of these, 35,000 will be auto body refinishers, 3,000 will be paint strippers, and only 1,000 will be plastic parts coaters. 72 Fed. Reg. 52971. ACMA believes that these numerical disparities have understandably caused EPA to concentrate its analysis on auto body facilities and to overlook the differences between auto body refinishers and plastic parts coaters.

ACMA has no reason to object to the paint stripping and auto body refinishing parts of this proposal. However, the plastic parts coating provisions reflect a misunderstanding of our industry and would have a devastating impact on it. We do not believe these provisions can be justified either under the urban air toxics policy they are said to carry out, or under the CAA emission control authority they rest on. We do not believe the applicable CAA provisions justify **any** new requirements for our industry. If EPA disagrees, it must at a minimum make dramatic changes in its proposal.

To explain why, these comments will first describe the affected members of our industry, and then explain why applying EPA's proposal to them cannot be justified either under the urban air toxics policy or under the CAA's specific emission control provisions.

II. How The Proposal Would Affect Our Industry

A. Description of the Potentially Covered Sources

Small composites fabricators would be the exclusive target of EPA's proposed rule. (Larger emitters are already subject to the MACT standards for Composites

Fabrication, see 40 CFR Part 63 Subpart WWWW, and Plastic Parts Coating, see 40 CFR Part 63 Subpart PPPP).

These small fabricators are often start-up businesses and often have only one or two employees. They make a wide variety of products, of widely varying sizes. A number of them specialize in large and irregular parts such as church steeples, water slides, fascias (architectural panels) for buildings, playground equipment, and domes for Orthodox churches and other buildings. Making such specialty products allows a small business to find a market niche and remain competitive.

Many, but by no means all, of our members use enclosed spray booths for coating their smaller parts. We estimate that overall, 20% of our “area source” members use spray booths.

EPA claims that OSHA regulations, specifically 29 CFR 1910.94(c), require spray booths for **all** spray coating at plastic coating operations, so that the proposed regulation would not require the installation of any spray booths that were not already required. 72 Fed. Reg. 52967, 52972.

However, EPA has misunderstood the way the OSHA regulations work. 29 CFR 1910.94(c) cross-references 29 CFR 1910.107, which relates to the design of spray booths. OSHA, in a binding interpretation, has said that it will not cite companies for non-compliance with this standard if they comply with a National Fire Protection Association consensus standard, NFPA-33. (Indeed 29 CFR 1910.94(c) cross-references NFPA-33.) This carries out a broader OSHA policy of allowing

employers to meet consensus standards that provide “equal or better” employee protection than the formal OSHA regulations as an alternative to complying with those regulations. See

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22163&p_text_version=FALSE and

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=19664&p_text_version=FALSE for full details.

NFPA-33 allows spray coating operations to be conducted outside of an approved, filtered spray booth in certain circumstances. The exceptions apply to spray rooms, undercoating operations, areas of low use with adequate ventilation, powder coat and waterborne products, and small touch-up and repair operations.

Many of our members qualify for these exceptions, and in particular for the spray room and low use area exclusions. To install a spray booth can cost anywhere between \$30,000 and \$140,000 excluding the cost of extra heating equipment and added operating costs. This is a major expense for any small business. It would be particularly burdensome for a business making large irregular parts since that business may only produce one such part a month. Indeed, some large parts such as wind turbine blades are too big to fit in a spray booth.

Spray booths can result in a higher quality finish. That is essential for auto body refinishing, but often unnecessary for composites fabricators making architectural components that will be viewed only from a distance, or products like barge covers for industrial use.

Many of our members do not use enclosed gun washers to clean their spray guns and have had bad experience with these washers.

EPA's proposed rule defines "coatings" not just as paint, but as any "material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, and maskants." Proposed 63.11180, 72 Fed. Reg. 52980. Our smaller members use all these materials to produce their products.

B. Description of EPA's Proposed Surface Coating Rule

EPA's proposal would cover **all** facilities that engage in **any** spray gun surface coating of **any** "part or product made of metal or plastic, or combinations of metal and plastic", see proposed 63.11180, 72 Fed. Reg. 52980 (definition of "miscellaneous parts and/or products"), proposed 63.11170, 72 Fed. Reg. 52976-77 (defining coverage). Though military facilities are exempted, there is no lower limit to the size of facilities covered. The rule would cover a homeowner who painted his plastic or metal siding with a spray gun rented from the hardware store.

The rule requires **all** spray coating to take place in an enclosed spray booth equipped with polyester or fiberglass exhaust filters, or other filters capable of 98% emission control.

In addition, all spray coating must use a spray gun that meets demanding transfer efficiency requirements, or an equivalent technology. In addition, all spray guns must

be cleaned either in a special spray gun cleaner, or disassembled and cleaned by hand.

For each of these requirements, see proposed 63.11173(e)(2), 72 Fed. Reg. 52978.

Finally, each facility must put each employee who spray coats parts through a course in proper spray coating techniques and must certify to EPA or the proper State agency that it has done this. Proposed 63.11173(e)(1), (f), 72 Fed. Reg. 52978. The facility must certify its compliance with the other rule requirements at least annually.

C. The Impact of EPA's Proposal on Our Members

Applying this proposal to our members would have a devastating and unjustified impact.

Many of them are very small sources for which **any** new bureaucratic requirements would be a burden. EPA should not impose such burdens without a clear environmental justification. As discussed in detail below, we see no such justification here.

Others make large parts for which use of spray booths is economically and to some extent technically, impracticable as set out above.

EPA's proposal shows little awareness of these special characteristics of our industry. It assumes that all covered facilities will already have spray booths. This may well be true for auto body facilities, but it is not the case for plastic parts coaters. The preamble asserts that "all of the facilities visited by EPA had enclosed gun washers",

72 Fed. Reg. 52698. This is not true for our facilities, although it may once again be true for auto body refinishers.

III. EPA's Proposal is Not Justified by the Environmental Benefits

Nothing in the Clean Air Act directly or indirectly required EPA to issue emissions standards for area sources that coat plastic parts.

EPA says that its "Urban Air Toxics" strategy justifies this proposal. That strategy rests on a CAA provision calling on EPA to

- (i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas ...and ,
- (ii) identify [and list for regulation categories and subcategories of emitters of these pollutants]. When identifying categories and subcategories of sources [for regulation] the Administrator shall assure that sources amounting to 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards.

CAA §112(k)(3)(B). See also CAA §112(c)(3).

EPA has included the heavy metals cadmium, chromium, lead, manganese and nickel in its list of 30 pollutants. See 64 Fed. Reg. 38706, 39715 (July 19, 1999).

ACMA does not object to that decision.

However, EPA has now proceeded – without notice or comment – to list plastic parts coating as a category "warranting regulation", CAA §112(c)(3), of area sources of these specific heavy metals in urban areas.

We find EPA's conclusion that plastic parts coating is a source of heavy metals significant enough to require regulation both unprecedented and unwarranted.

Large plastic parts coaters are similar to the small sources at issue here, except that by definition they emit more HAPs. Yet when EPA set MACT standards for these large sources, the Agency did not require the use of spray booths, or require any other type of heavy metal control. Indeed, neither the proposed nor the final rule even **mentions** heavy metal emissions. See 69 Fed. Reg. 20968 (April 19, 2004)(final); 67 Fed. Reg. 72276 (December 4, 2002)(proposal).

Moreover, it seems clear that under EPA's own decision-making standards plastic parts coating as a category does not emit nearly enough HAPs to qualify for regulation under the Urban Air Toxics Policy.

When EPA issued that Policy, it generally listed a source category for regulation only if it accounted for at least 15% of area source emissions of one of the 30 designated HAPs. 64 Fed. Reg. 38720.

EPA relaxed that policy for heavy metal emissions because the sources of these metals are so widespread. However, in listing source categories for potential regulation – including auto body shops – EPA restricted its list to categories that accounted for between five and twelve percent of area source emissions of these HAPs. 64 Fed. Reg. 38722.

EPA's own proposal shows that there is no way that plastic parts coating sources can come close to even five percent of area source emissions. EPA projects emissions from its entire “aggregated” category, including both auto body shops and plastic parts coating, as 12.4 tons per year of heavy metals. 72 Fed. Reg. 52972. But as

mentioned earlier these emissions come from an estimated 35,000 auto body shops and an estimated 1,000 plastic parts coaters. If we assume that the emissions come equally from each sector – which is very unlikely given that the coatings applied to composite products typically have much lower metals content than many of the coatings used for automotive refinishing –, then plastic parts coaters would account for about 700 pounds a year and auto body shops would account for the rest. Similarly, if that 12.4 tons a year amounts to between 5 and 12 percent of total heavy metal HAP emissions, the share of plastic parts coating would be between 0.15% and 0.33% of total area source emissions. This is far below the cut points that EPA itself says it used to decide which sectors to regulate.

To put the same point another way, there must be many emissions categories that are responsible for more than two tenths of a percent to three tenths of a percent of urban heavy metal emissions. Under EPA's own policies, all these categories must be listed for regulation and regulated before regulating our industry is considered.

EPA has explained that its listing decisions will remain open for reconsideration until the Agency bases a final regulatory decision on them. 64 Fed. Reg. 38721. EPA has not yet made such a decision for plastic parts coating. Given the very small share of HAP emissions from the source category that contains our facilities, we believe that both the law and consistency with past policy require EPA to remove plastic parts coating operations from this rule.

IV. Even if EPA's Proposal had Significant Environmental Benefits, It would Still be Illegal

EPA's proposed standards for plastic parts coating rest on a CAA provision allowing HAP regulations for small sources to require only the use of "generally available control technology or management practices [GACT]", CAA §112(d)(5).

EPA cannot justify a rule that would dramatically increase the compliance burdens of most plastic parts coating sources – particularly the very small ones, and those that make large products – as requiring only the uses of "generally available" technology.

Beyond that, the broad "generally available" language grants EPA wide discretion to select both the factors it will weigh in issuing regulations, and the weight it will give each factor. EPA's proposal explains that "in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category." 72 Fed. Reg. 52966.

Executive Order 12866 requires EPA rules to rest on a reasonable relationship between costs and benefits, unless the law requires otherwise. For the reasons given above, the rule for plastic parts coaters that EPA has proposed does not rest on such a relationship, although there is no legal reason why it could not.

Similarly, the Regulatory Flexibility Act commands agencies to take special care to minimize the impact of their rules on small businesses. It requires any proposed rule to "contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities" 5 U.S.C. §

603(C), unless the head of the agency can certify that the proposal “will not have a significant impact on a substantial number of small entities.”

EPA has included such a certification in this proposal. It states that no such impact will arise

because the proposed rule does not create any new burdens for existing sources, other than minimal notification and reporting requirements, and best management or equipment practices, which are designed to recover initial cost. We have determined that the cost of these requirements (estimated at less than \$1,000 per year per facility) would not result in an adverse economic impact on any facility, large or small (i.e. the cost is less than one percent of total revenues, even for small businesses)

72 Fed. Reg. 52974.

This statement is indefensible applied to a rule that would force many facilities that do not have spray booths to install them, and to change their business practices in many other expensive ways. For example, training expenses alone would exceed EPA’s cost estimate for any operation that had more than five workers, since each worker would have to be trained every five years at a cost of \$1000. To comply with the law EPA must prepare a new analysis reflecting the true facts, allow public comment on it, and change its proposal accordingly.

V. The Changes EPA’s Proposal Requires

A. Plastic Parts Coaters Should Not be Regulated

EPA should not issue regulations without a valid reason. Controlling heavy metal emissions to carry out the Urban Air Toxics policy is the only reason EPA has offered to support this regulation. As discussed in detail above, that justification

collapses under critical examination. Accordingly, EPA should withdraw its plastic parts coating proposal.

B. If EPA Does Not Withdraw its Proposal, the Agency Must Make Major Changes in Any Rule it Promulgates

1. The Rule Should Only Apply to Coatings that Contain More than 1% of the Covered Metals

EPA has proposed this rule to reduce emissions of the heavy metals cadmium, chromium, lead, manganese and nickel. However, the proposed requirements would apply to all coating operations whether or not they contained these metals. Such an approach would be illogical and arbitrary. Beyond that, it would provide no incentive for sources to reduce the heavy metal content of their coating through pollution prevention, even though EPA recognizes pollution prevention as the most effective and desirable form of pollution control.

ACMA therefore recommends that all coatings that contain equal to or less than 1% heavy metals be excluded from the rule. All adhesives would be automatically excluded under this test since they do not contain any heavy metals.

2. There Should be a De Minimis Exclusion

A rule, like EPA's proposal, that would cover all spray painting whatsoever makes no sense. EPA recognized this in a parallel section of the same proposal by exempting sources that use less than 150 gallons of paint stripper a year from most of the proposed paint stripping requirements.

The Plastic Parts Coating MACT standard, which applies to **major** sources, contains a de minimis exclusion for facilities that use less than 100 gallons a year. By all logic there should be a **larger** exclusion for the small businesses that would be covered by this proposal, since they would be less able to cope with the regulatory system than major sources. ACMA recommends that EPA adopt the same 150 gallon threshold that it has proposed for paint stripping, so that the rule would not apply to any source that applied less than 150 gallons of covered coatings a year by spray painting.

3. Spray Booths Should Not Be Required where they are not Installed Already

EPA assumed that all spray painting operations subject to this proposal would have to install spray booths to meet OSHA requirements. As we explained above, this is not the case. Because of this mistake, EPA has entirely failed to analyze, or propose for public comment, any justification for the extra cost of the extra spray booths that its proposal would in fact require. (ACMA believes no such valid justification is possible.)

Since EPA has done nothing to justify the true cost of its spray booth proposal, it cannot validly promulgate any final requirement for additional spray booths on the current record.

4. No additional administrative burdens can be justified

In demonstrating compliance with the proposed rule or in demonstrating an exempt status, as much as possible sources should not be required to generate documents or maintain records that they don't already have. For example, Material Safety Data

Sheets (MSDS), which sources will already be required under OSHA regulations to obtain and keep on file for their paints and other coatings, should serve as adequate documentation of the HAP content of these materials. Given the small size and limited administrative capacity of these area sources, and the very small amount of pollutant to be controlled under EPA's proposed rule, extra recordkeeping burdens cannot be justified.

5. More Detailed Changes Will also be Necessary

Smaller changes in addition to these four major changes would also be necessary to create a workable final rule. Specifically:

- EPA's proposal read literally, would cover adhesives and other non-paint sprayed coatings. Adhesive spray is usually applied at very low pressure, as a stream or spray, as a hot melt or solvent/water borne product. Because of the nature of these operations, they create little environmental concern and control has no commensurate environmental benefit. Even with low transfer efficiencies, these sources have been shown to be very low emitting sources because of over spray capture on surrounding surfaces and poor conveyance in exhaust streams (heavier particle weights). The coating definition in the rule should be limited to painting operations.
- ACMA agrees that higher transfer efficiency can save money and reduce emissions. However, this technology is not compatible with all operations. HVLP does not blend well for spot repairs, especially with metallic coatings. HVLP is not effective for very high solid coating materials. Conventional

air atomized spray technology remains the best technology for low use areas and in high abuse application; gun costs are significantly less and the function at issue doesn't justify a higher equipment costs. ACMA requests that HVLP requirements be limited to paint refinishing operations and exclude small spot repairs.

- The proposed rule would require all gun cleaning to take place either by disassembling the gun and hand cleaning it, or in an enclosed gun cleaner. Although the proposed rule does not define "enclosed gun cleaner", the marketplace does offer an enclosed gun cleaning system that basically works like a dishwasher where the spray gun is put inside and the cleaning system is closed and activated. This system is very slow, expensive, marginal in performance, and does little to address ancillary painting equipment. More common equipment is an open sink where brushes and solvent are used by the operator to flush and clean its equipment. This equipment is more economical, faster, and better cleaning. This rule is directed at heavy metals. An enclosed gun cleaner has no advantage over an open gun cleaner, or for that matter even a bucket, for reducing these emissions. ACMA requests that all references to gun cleaners be deleted from the proposed rule.
- The level of training that EPA has proposed is excessive, particularly for small operations with only one or two employees who must perform multiple functions. Training requirements should be eliminated for all coating operations except paint spray booth maintenance personnel.

Furthermore, that training should be limited to filter alignment and maintenance.

- The rule itself does not make clear in its applicability provisions that it only applies to spray application of coatings, although ACMA believes that this in fact was EPA's intent. That point should be clarified to avoid confusion and unintended results. For example, the current proposal could be read to require training of employees at facilities where no spray painting takes place, or as covering the application of caulks and sealants, even though these materials cannot be sprayed because they are not liquid.

VI. Conclusion

For the reasons given above, EPA should exclude plastic parts coatings from its proposed standard. ACMA questions the justification for the rule for all coating operations but specifically in the case of plastic parts coating, as this source category simply does not emit enough heavy metals to justify regulation under the decision-making standards that EPA has articulated. EPA does not even try to show that the standards for classifying this source category as a significant contributor have been met. Instead, the Agency has simply combined plastic parts coating with another regulatory category and attempted to justify both together. Such an approach would reduce the system of regulatory categories to a meaningless formality and cannot be defended.

If EPA in defiance of these facts does promulgate a plastic parts coating rule, it will need major changes as set out above.