



Division of Air Pollution Control Response to Comments

Rule: OAC Chapter 3745-21 Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and related Materials Standards

Agency Contact for this Package

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Ohio EPA held a public hearing on August 18, 2015 regarding the five year review of OAC Chapter 3745-21. This document summarizes the comments and questions received at the public hearing and during the associated 30 day comment period, which ended on August 18, 2015.

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 in parentheses.

This responsive summary contains responses on 3745-21-07 only as proposed to JCARR on July 13, 2015.

3745-21-07(M)(5) Exemptions

Comment 1: The following recommendation is requested to clarify that the control efficiency requirements at paragraph (M)(2) does not apply to cold box resin binder systems that use a non-organic catalyst gas such as Sulfur Dioxide (SO₂).

(i) Paragraph (M)(2) of this rule shall not apply to the use of a phenolic urethane cold box resin binder system in foundry core-making and mold-making operations, provided the organic catalyst gas emissions are vented to a control device that is designed and operated to remove at least ninety-eight per cent, by weight, of the catalyst gas emissions or the catalyst gas is non-organic or maintain a maximum catalyst gas outlet concentration of one ppmv on a dry basis, whichever is less stringent. (In a phenolic urethane cold box resin binder system, sand is mixed with a two-part liquid urethane resin binder, and a catalyst gas is blown into the resin-coated sand to cause hardening.) **(Rob Brundrett, Ohio Manufacturers' Association)**

Response 1: The proposed revisions are underlined in the comment. The requested revision to exempt non-organic catalyst gases does not account for any organics released from the reaction between the catalyst gas and the mold resins. The existing exemption language sufficiently exempts well controlled mold making operations and operations with low organic compound emissions.

Comment 2: We write again, on behalf of our client, Schmelzer Industries ("Schmelzer"), to oppose Ohio EPA's proposed amendment to OAC 3745-21-07(M)(5)(g). Ohio EPA asserts the proposed amendment would bring the regulation into line with the agency's original intent for, and longstanding application of, the regulation. But Ohio EPA knows its application of the regulation has been far from consistent. In truth, Ohio EPA's amendment would narrow an existing exemption to impose new and costly pollution control requirements on a small company that has been operating lawfully under the existing exemption for over a decade, in an area that already meets all of the national air quality standards.

For decades, the exemption currently codified at (M)(5)(g) has excused both existing and new sources in seven counties (Darke, Fairfield, Madison, Perry, Pickaway, Preble and Union counties), within a facility with the potential to emit up to 100 tons of organic compounds per year, from complying with the emission limitations in OAC 3745-21-07(M)(3)(a), (M)(3)(b), (M)(3)(g), and (M) (4). Ohio EPA itself issued permits applying the exemption to new sources at Schmelzer (in 2003) and Denison Hydraulics (in 2005). And last year, after Ohio EPA attempted to issue a new permit to Schmelzer that denied (M)(5)(g)'s applicability to new sources, the Ohio Environmental Review Appeals Commission ("ERAC") affirmed that (M)(5)(g) "unambiguously includes both existing and new sources of air pollution." *Schmelzer Industries, Inc. v. Butler*, Case No. ERAC 14-646809, Ruling (Aug. 13, 2014) (available at <http://erac.ohio.gov/Portals/0/SCHMELZER%20INDUSTRIES%206809.pdf>).

Yet, none of this is evident from Ohio EPA's public notices and filings. Ohio statute obligated Ohio EPA to prepare a "complete and accurate" rule summary and fiscal analysis for the Joint Committee on Agency Rule Review (JCARR). R.C. 127.18(B). But Ohio EPA's summary and analysis mischaracterized the proposed amendment to (M)(5)(g) as a minor clarification. Ohio EPA stated that replacing the word "sources" in the exemption with "existing sources" would "provide[] needed clarity to eliminate potential misinterpretations." (OAC 3745-21-07, Rule Summary and Fiscal Analysis (Part A) at 2.) Worse, Ohio EPA asserted that Schmelzer's (and ERAC's) reading of (M)(5)(g) was simply a "misinterpretation" that "contradicts *** Ohio EPA's intention and historical interpretation of the rule, policy and handling of facilities." (Id. at 5.) Ohio

EPA's disingenuous explanation to JCARR for revising (M)(5)(g) is, alone, grounds for invalidating this amendment. See R.C. 106.021(E).

So, too, is Ohio EPA's failure to justify the proposed amendment's adverse impact on Schmelzer. As Ohio EPA has explained, "[t]he rules in OAC Chapter 3745-21 *** are part of Ohio's strategy for the attainment and maintenance of the NAAQS [National Ambient Air Quality Standards] for ozone and CO [carbon monoxide] as required in the Clean Air Act. The public purpose of this rule is to assist in the attainment of the NAAQS." (CSI-Ohio, Business Impact Analysis, Response to Question 5.) Thus, one might expect Ohio EPA to have considered, in the course of analyzing the proposed amendment, whether narrowing the existing exemption is necessary to attain or maintain the ozone or carbon monoxide air quality standards. But the agency's analysis ignored this core issue entirely.

In fact, all of Ohio is in attainment for the carbon monoxide NAAQS and the 1-hour and 1997 8-hour ozone NAAQS. (See US EPA, *The Green Book, Nonattainment Areas for Criteria Pollutants*, <http://www.epa.gov/airquality/greenbook/>.) Schmelzer's home county of Perry County also is in attainment for the 2008 ozone NAAQS. (See *id.*) Moreover, Schmelzer is an "area source," not a "major source," of organic compound emissions. Schmelzer's only organic compound emissions are its styrene emissions, and Schmelzer's permit already limits the facility's total styrene emissions to 9.9 tons per year. And only 15% of those emissions (around 1.49 tons) are from Schmelzer's processing oven, which is the only emission unit that would be subject to OAC 3745-21-07(M)(4)'s organic compound emission limitations if Ohio EPA goes forward with limiting the exemption in (M)(5)(g). Ohio EPA has no justification for imposing new VOC emission limitations on minor sources that, like Schmelzer, have been operating without such restrictions for decades, but remain subject to all other federal and Ohio air pollution control rules. In short, Ohio EPA has failed to identify any environmental benefit that might feasibly be expected to result from its proposed amendment to (M)(5)(g).

The amendment would, however, cause very real harm to Schmelzer. Schmelzer is a small company, employing 28 men and women in a county with an unemployment rate of approximately 6.4% -- more than 1% over the state-wide average. As Ohio EPA has admitted, amending (M)(5)(g) would expose Schmelzer to new and costly limitations on its organic compound emissions. Ohio EPA states:

A regenerative thermal oxidizer (RTO) would typically be used to control organic compound emissions. Based on published control costs and a conservative RTO size, capital cost can range from \$150,000 to \$500,000 and annual operating costs can range from \$50,000 to \$100,000.

(OAC 3745-21-07, Rule Summary and Fiscal Analysis (Part A) at 5.) Assuming a 7-year depreciation, purchasing, installing, and operating an RTO could cost Schmelzer between \$71,500 to \$171,000 per year – an infeasible option for a company Schmelzer's size. And the cost is entirely disproportionate to any conceivable benefit. Assuming an RTO would control 85% of the 1.49 tons per year of styrene emissions from Schmelzer's processing oven, installing and operating the RTO would cost up to \$135,000 a year for each ton of styrene emission reductions. That is an absurd cost to accomplish a minute reduction in emissions, particularly for an area that is already meeting all national air quality standards.

Ohio EPA's rule summary and fiscal analysis suggests Schmelzer could avoid these costs by reformulating its raw materials. But reformulation is not an option for Schmelzer. Schmelzer manufactures glass fiber. Specifically, it supplies glass fiber surfacing veils and light weight reinforcement mats for companies in the composites industry. There is no viable substitute for the resin material Schmelzer uses, which is styrene, the dominant solvent in plastics. And even if Schmelzer could reformulate its raw materials, they would stand to lose a substantial part of their business. The materials Schmelzer sells must meet specific requirements, because those materials become components of Schmelzer's customers' end products. All of Schmelzer's customers would have to re-qualify any new product formulations. It is safe to assume that most of those customers would avoid the hassle and expense and simply move to one of Schmelzer's competitors.

Finally, Ohio EPA suggests that Schmelzer could pay a consultant up to \$10,000 to try and find another exemption in OAC 3745-21-07(M)(5) that might apply. But Ohio EPA does not identify any exemptions that it believes might apply to Schmelzer. And the possible availability of other, unidentified exemptions does not, itself, justify the modification that Ohio EPA has proposed. Without such a justification, Ohio EPA has not met its obligation to explain why its "regulatory intent ... justifies the adverse impact to the regulated business community" that its proposed revisions to (M)(5)(g) would impose, in violation of R.C. 106.021(F), and has not adhered to the requirements for the adoption or modification of emission standards in R.C. 3704.03(E).

For all of these reasons, Schmelzer respectfully requests that Ohio EPA reconsider and abandon its costly, unnecessary, and unjustified proposal to narrow the existing exemption in OAC 3745-21-07(M)(5)(g) to only "existing sources" (generally, those installed in or before 1972). Ohio EPA has misrepresented its reasons for proposing to modify this decades-old exemption; has identified no expected environmental benefit from withdrawing the exemption from Schmelzer after all this time; and has not justified the crushing economic burden that narrowing that exemption

would impose. And if Ohio EPA does not reconsider and withdraw its proposed amendment to (M)(5)(g), Schmelzer respectfully asks that the members of the Joint Committee on Agency Rule Review, copied below, recommend the adoption of a concurrent resolution to invalidate that amendment. **(Eric B. Gallon, Porter, Wright, Morris and Arthur LLP, on behalf of Schmelzer Industries)**

Response 2: Ohio EPA has removed the proposed revision to this rule by removing the word “existing”.

End of Response to Comments