



Paul Braun  
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Re: Draft Rule Language Available for Comment – Startup, Shutdown or Malfunction  
Scheduled Maintenance Rules

Dear Mr. Braun,

The Ohio Manufacturers' Association ("OMA") is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry and in every county of Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

The OMA respectfully submits the following comments in response to amended Ohio Administrative Code Rules 3745-14-11, 3745-15-01, 3745-15-06, and 3745-17-07, Ohio's startup, shut down or malfunction ("SSM") rule amendments in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods (80 Fed. Reg. 33,840 (June 12, 2015)).

The OMA submitted comments in response to Ohio EPA's solicitation of early stakeholder input in July 2016 and comments in opposition to U.S. EPA's Proposed SSM SIP Call in May 2013. Those comments are incorporated and attached hereto. The OMA appreciates the opportunity to participate in this process.

Regards,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett  
Director, Public Policy Services

Encl.

cc: Frank L. Merrill, Esq.  
Julianne Kurdila, Committee Chair

**Comments of  
The Ohio Manufacturers' Association**

**In Response to Ohio EPA's Amended Startup, Shutdown  
or Malfunction and Scheduled Maintenance Rules  
and Business Impact Analysis**

**December 14, 2016**

**I. Comments to Draft Business Impact Analysis Form**

The OMA first looks to the Draft Business Impact Analysis and offers limited comments in the following areas.

**Development of the Regulation**

**Number 10: "What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the agency consider regulatory alternatives?"**

Here, Ohio EPA states that "all suggested alternatives were considered before the current draft was prepared." The OMA would ask that Ohio EPA consider expanding this response to include a more explicit answer to the question posed. Namely, what alternative "specific provisions" were considered by Ohio EPA; how it incorporated, or chose not to incorporate, draft language from the industry and trade groups referenced; and what regulatory alternatives were or were not considered. Ohio EPA indicates that "suggested alternatives were considered," but does not elaborate on those alternatives, the OMA asks that it do so for the Common Sense Initiative's benefit.

**Adverse Impacts to Business**

**Number 14: "Provide a summary of the estimated cost of compliance with the rule."**

Ohio EPA informs that "[t]here should be no additional costs associated with the changes in this rulemaking if the changes are accepted by U.S. EPA as part of Ohio's SIP." The OMA would note that any change to current regulations will impact their constituent base. Namely, distributing additional information related to maintaining compliance with any changes to the rules already in place. General uncertainty as it relates to best practices during period of SSM is a quantifiable cost to business that should be accounted for in this calculation. Of note is new regulation related to opacity that was not previously correlated with particulate matter NAAQS attainment or nonattainment, but rather as an indicator of proper orientation and maintenance of particulate control equipment. Many of the regulations to be amended, such as this one, have been in place and approved by U.S. EPA as far back as the early 1980s. *See, e.g.*, OAC 3745-15-06(A)(3), approved October 1982. Changing systems will likely result in additional costs of compliance, at least as far as information dissemination and practice adaptation are concerned. Regulated entities will be the ones who feel the impact of the rule change because of increased exposure to enforcement from malfunction events and the need to carefully review permits and

emission limits to identify those that need to be adjusted to account for startup and shutdown operations.

## **II. General Areas of Concern Regarding Ohio EPA's Rule Amendments**

Setting aside the general legal invalidity of the SSM SIP Call, the OMA has a few overarching concerns with Ohio EPA's rulemaking on this topic. These broader areas of concern are outlined as follows:

1. U.S. EPA's SSM SIP Call is arbitrary and unlawful. Ohio EPA and others are rightfully challenging the SSM SIP Call's facial invalidity before the D.C. Circuit (Case No. 15-1166, oral argument not yet assigned). Any challenges to the SSM SIP Call as specifically applied to Ohio must await potential appeals to the Sixth Circuit after final action by U.S. EPA specific to Ohio in response to the SIP Call. Ohio should continue to respond to the SIP Call in a manner that does not undermine Ohio's recourse to judicial review of U.S. EPA's actions. Ohio should also try to minimize the harm and disruption resulting from U.S. EPA's improvident action.
2. SIP requirements applicable during SSM conditions should never compromise or take precedence over safety.
3. Any prejudicial or unwarranted rule changes in response to the SSM SIP Call should take effect only upon full approval by U.S. EPA. Moreover, those rule changes should cease to be effective if any court, future Congress, or future U.S. EPA negates the SSM SIP Call's requirements.
4. As previously stated in the OMA's July 28, 2016 response to Early Stakeholder Input (attached), U.S. EPA's objections to OAC 3745-17-07(A)(3)(c) and 3745-17-07(B)(11)(f) (which currently exclude SSM periods from the opacity provisions applicable to normal source operations) have no rational basis. U.S. EPA's New Source Performance Standards have contained the same exclusions since 1971. Ohio has successfully attained and maintained the NAAQS for particulate matter with these exclusions in place. There is no correlation between the level of opacity—the degree to which an emission of air contaminants obstructs the transmission of light—from an individual stack and the concentration of regulated particulate matter in the ambient air. There is no ambient air quality standard for opacity. Moreover, a change such as this would require a demonstration of compliance with the criteria set forth in Clean Air Act § 110 and R.C. 3704.03(D) and (E). In the absence of any such demonstration, Ohio EPA should not have sought to make changes to OAC 3745-17-07(A)(3)(c) or 3745-17-07(B)(11)(f). The OMA would ask that Ohio EPA reconsider its decision to amend OAC 3745-17-07.
5. The OMA appreciates and recognizes that Ohio EPA adopted many of their suggestions as it relates to the definition of “Malfunction” in OAC 3745-15-01(P). The OMA does remain concerned, however, that the majority of the definition suffers from being too specific, while also too vague. The degree of uncertainty as it relates to the draft rule

changes will dictate the regulated community's ability to understand the nature and cost of the adverse impacts of the rulemaking on their day-to-day operations. The OMA asserts that their more streamlined suggestion for language in OAC 3745-15-01(P) (highlighted below) would provide the same regulatory impact Ohio EPA seeks, while also furthering the goals of Executive Order 2011-01K and providing accessible standards to those expected to comply with the new rulemaking requirements.

6. The OMA recognizes and appreciates that OAC 3745-15-06(E)(1)-(4) "Alternative emissions limits applicable to operations during period of startup, shutdown, malfunction, and scheduled maintenance" accommodates its previous request that "where an applicable New Source Performance Standard or NESHAP already provides work practice or performance standards for malfunction events, the rule should provide the option to follow those federal standards." The OMA would suggest that perhaps the title of this Rule provision reflect its purpose more clearly to the regulated community.

### **III. Specific Rule Text Comments**

The OMA respectfully recommends that Ohio EPA's final draft rule changes in response to the SSM SIP Call incorporate the following revisions and comments to the existing rules in question (the recommended changes are underlined in red for clarity):

#### **2745-15-06 Definitions (as proposed)**

(P) "Malfunction" means a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, process monitoring equipment or a process to operate in a normal or usual manner. Equipment failures that are caused in part or whole by poor maintenance or careless operation are not malfunctions.

#### **Comment:**

The above draft rule language deviates from that proposed by the OMA in their July 28, 2016 Comments. The first half of the rule mirrors the language previously proposed by the OMA ("Malfunction" means a sudden, infrequent, and not reasonably preventable failure . . ."), however the latter half of the draft rule language does not. In an effort to provide clarity and certainty, the OMA proposes the following language as it relates to this rule:

(P) "Malfunction means a sudden, infrequent, and not reasonably preventable failure of any emission source, air pollution control equipment, or related facility air pollution control equipment, process equipment, process monitoring equipment or a process to operate in a normal or usual manner. Equipment failures that are caused in part or whole by poor maintenance or careless operation are not malfunctions.

#### **3745-15-06 Malfunction of equipment; scheduled maintenance; reporting.**

Below please find select comments as to certain provisions in OAC 3745-15-06.

**3745-15-06(B)(1) (as proposed)**

In the event that any emission source, air pollution control equipment, or related facility ~~breaks down in such a manner as to cause~~ causes the emission of air contaminants in ~~violation of any applicable law~~ excess of the applicable emission standard as a result of a malfunction, the person responsible for such source, equipment or facility shall immediately notify the Ohio environmental protection agency district office or delegate agency of such ~~failure or breakdown~~ malfunction. If the malfunction continues for more than ~~seventy-two~~ twenty-four hours, the source owner or operator shall provide a written statement to the director within ~~two weeks~~ one week of the date the malfunction occurred.

**Comment:**

The above language adopts many of the suggestions put forth by the OMA. Four such omissions, however, would improve upon the language as presented.

- (1) The use of “immediately” regarding notification requirements would be better served by the language originally suggested by the OMA: “as soon as practicable.” This requirement is more realistic when considering facilities dealing with perhaps sudden changes to previously functioning equipment. It also serves the purpose of prioritizing the safety of those encountering a malfunction.
- (2) The OMA and its constituents are not served by the reduction in time for providing a written statement to the director regarding the malfunction, from two weeks to “one week of the date the malfunction occurred” as proposed by Ohio EPA. There is no justification for the change in this requirement, and it is not necessary to effectuate the rule amendment, moreover it is unduly burdensome. The OMA proposes that, as a more definite time period, Ohio EPA utilize the standard of “within one week of the date the malfunction ended.” This is a certain period of time that would provide ease of compliance to OMA members.
- (3) Finally, the OMA would ask that Ohio EPA consider including its suggested extension provision in the draft rule. The OMA proposes that Ohio EPA add the following sentence: “The director may extend the deadline for providing the written statement for good cause.” In bringing the written report requirement down from two weeks to one week, and not explicitly providing for a means to seek a reasonable extension, Ohio EPA may hamstring the regulated community and cause entities to unnecessarily run afoul of this provision. The OMA would ask that Ohio EPA reconsider both concepts in its final rule.

Incorporating these concepts, the OMA suggests the revised rule read as follows:

- (1) ~~In the event that any emission source, air pollution control equipment, or related facility causes the emission of air contaminants in excess of the applicable emission standard as a result of~~ If a malfunction causes, or in the judgment of the owner or operator may cause, the emission of air contaminants in violation of any applicable excess of the applicable emission standard as a result of a malfunction potential to emit of such source, as defined in OAC 3745-31-01, expressed in pounds per hour, the person responsible for such source, equipment or facility the owner or operator shall notify the Ohio environmental protection agency district office or delegate agency of such failure or breakdown malfunction as soon as practicable. If the malfunction continues for more than ~~seventy-two hours~~ twenty-four hours, the ~~source~~ owner or operator shall provide a written statement to the director within one week of the date the malfunction ~~occurred~~ ended. The director may extend the deadline for providing the written statement for good cause.

**3745-15-06(B)((1)(b)-(c) (as proposed)**

- (b) The estimated or actual duration of breakdown.
- (c) The nature and estimated quantity of air contaminants which have been or may be emitted into the ambient air during the breakdown period.

**Comment:**

The OMA would suggest, for the purposes of consistency, that instead of “breakdown” these provisions utilize the word “malfunction” as it is used throughout the rest of the rule as amended.

**3745-15-06 (F) (as proposed)**

(F) During routine maintenance of add-on pollution controls, an owner or operator of a coke oven battery is exempt from the provisions of any permit-to-install or permit-to-install and operate issued under Chapter 3745-31 of the Administrative Code or any permit-to-operate issued under Chapter 3745-77 of the Administrative Code if all of the following occur:

- (1) Routine maintenance of the add-on control in any ~~rolling twenty-four month period~~ calendar year does not exceed ~~fourteen~~ twenty-one days.
- (2) Routine maintenance is conducted in a manner consistent with good air pollution control practices for minimizing emissions.

(3) A report is submitted to the director ten days prior to the start of the routine maintenance (if ten days cannot be provided, the report must be submitted as soon as practicable) containing an explanation of the schedule of the maintenance.

**Comment:**

The OMA appreciates Ohio EPA's efforts to address sources where a complete source shutdown may result in damage to the air pollution source or is otherwise impossible or impractical. Coke ovens are such sources. However, as evidenced by decades of routine maintenance on coke oven sources, more than 14 days is needed to conduct maintenance.

The sulfur removal system is complex and requires enough time to meet **safe** purge conditions. For instance, one member has 3 separate areas that need maintenance activities during the outage, and it is not as simple as flipping a switch. Rather, the system requires 10 days just to shut down (isolate, purge) and start up (fill, heat). Maintenance activities typically take 10 – 14 days. Anything shorter than 21 days could impact the reliability of the air pollution control system and cause more frequent outages in the year.

The OMA suggests 21 days rather than 14 for routine maintenance of coke oven add-on pollution control systems, calendar year rather than rolling twenty-four month period, and flexibility on the report if routine maintenance is conducted earlier than anticipated because circumstances dictate the need.

**IV. Conclusion**

The OMA appreciates the opportunity to comment on Ohio EPA's proposed draft rulemaking. As Ohio EPA continues to develop these rules please include the OMA in these developments, and our environmental counsel Frank L. Merrill of Bricker & Eckler. The OMA looks forward to working with Ohio EPA on this issue.