

# Hearing Summary

Rule Package: OAC 3745-17, 5-year review

Original filing date: June 1, 2017

Public comment start date: June 1, 2017

Public comment end date: July 11, 2017

Public hearing date: July 11, 2017 in Columbus, Ohio

List of Rules: OAC 3745-17-(01, 03, 04, and 07 to 14)

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Were there any participants in this public hearing beyond Ohio EPA staff or JCARR staff?

☐ Yes

☒ No

Were there comments received during the public comment period outside of those presented at this hearing?

☒ Yes

☐ No

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This hearing summary has been compiled to meet the requirements of Section 119.03 of the Revised Code.

This hearing summary includes this cover sheet and the following attachments:

1. **Attachment A** - A copy of the public notice for this hearing.
2. **Attachment B** - A transcript of the public hearing.
3. **Attachment C** - A copy of the response to comments.

Ohio EPA's response to comments document includes the comments received, who commented, the agency response to comments, and a statement of whether or not the rule was changed due to the comments.

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Ohio EPA digitally records all public hearings for rules. The digital recordings are available upon request in a WAVE (.wav) file format.

**Public Hearing**  
**Ohio Environmental Protection Agency**  
**Five-Year Rule Review of Ohio Administrative Code (OAC) Chapter 3745-17, Particulate Matter Standards**

Notice is hereby given that the Ohio Environmental Protection Agency, Division of Air Pollution Control (DAPC) has performed a review of the above referenced rules primarily to satisfy the requirements of Section 119.032 of the Ohio Revised Code (five-year review). The DAPC finds the following rules to be necessary and with need for changes. The DAPC proposes to amend Ohio Administrative Code (OAC) Chapter 3745-17, particulate matter standards. The amendments are being proposed to remove facilities and emission units that have been permanently shutdown since the last review and to add an additional compliance option for certain facilities, including utilities, that are required to use a continuous opacity monitor to comply with visible emissions requirements. Other changes can be found in the Rule Synopsis included with the rule package.

Pursuant to Section 121.39 of the Ohio Revised Code, DAPC was required to consult with interested parties affected by the rules before the Division formally adopts them. On June 8, 2016, these rules went out for a 31-day review by interested parties.

Pursuant to Section 119.03 of the Ohio Revised Code, a public hearing on these rule changes will be conducted on Tuesday, July 11, 2017 at 10:30 AM at Ohio EPA, Lazarus Government Center, 50 W. Town Street, Suite 700, Columbus, Ohio. All visitors to Ohio EPA must register at the Security desk in the lobby upon arrival. Please bring photo identification (such as a valid driver's license). For security reasons, visitors are required to wear their badge at all times while in the building. Please arrive early to complete these procedures.

Pursuant to Part D of Title I of the Clean Air Act, Ohio EPA is required to establish a state implementation plan (SIP) for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The above-mentioned rules are a part of Ohio's SIP and the proposed amendments will be submitted to USEPA as a modification of the SIP. The above-mentioned hearing shall be considered the public hearing for the SIP submittal.

All interested persons are entitled to attend or be represented at the hearing and give written or oral comments on these rule changes. All oral comments presented at the hearing, and all written statements submitted at the hearing or by the close of business on July 11, 2017, will be considered by Ohio EPA prior to final action on this rule. Written statements submitted after July 11, 2017, may be considered as time and circumstances permit, but will not be part of the official record of the hearing.

These rules are available on DAPC's Web page for electronic downloading. The URL is: <http://epa.ohio.gov/dapc/DAPCrules.aspx> and see the information under the "proposed rules" tab. Questions regarding accessing the web site should be directed to Paul Braun at 614-644-3734; other questions or comments about these rules should be directed to Michael Maleski at Ohio EPA, (614) 644-1961, [michael.maleski@epa.ohio.gov](mailto:michael.maleski@epa.ohio.gov), or mailed to Michael Maleski, Ohio EPA, Division Air Pollution Control, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. Persons submitting comments electronically are encouraged to follow-up with a hard copy via regular mail.

BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY

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IN RE: :  
:  
FIVE-YEAR REVIEW OF :  
OAC RULE 3745-17 :  
PARTICULATE MATTER STANDARDS :

- - -

PUBLIC HEARING

held before Darla Peelle, Public Involvement  
Coordinator for Ohio EPA's Public Interest Center,  
taken before Heather A. Piper, Registered  
Professional Reporter, at the Lazarus Government  
Center, 50 West Town Street, 6th Floor, Conference  
Room B, Columbus, Ohio, on Tuesday, July 11, 2017,  
at 10:30 a.m.

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FRALEY COOPER & ASSOCIATES  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-4620  
(614) 228-0018 - (800) 852-6183

## P R O C E E D I N G S

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MS. PEELE: My name is Darla Peelle.  
I'm a public information officer with the Ohio  
Environmental Protection Agency.

DAPC finds the following rule to be  
necessary and with need for changes. DAPC proposes  
to amend Ohio Administrative Code Rule 3745-17,  
particulate matter standards. Amendments are being  
proposed to remove facilities and emission units  
that have been permanently shut down since the last  
review and to add an additional compliance option  
for certain facilities, including utilities, that  
are required to use a continuous opacity monitor to  
comply with visible emissions requirements. Other  
changes can be found in the Rules Synopsis included  
with the rule package. The purpose of today's  
hearing is to obtain comments from any interested  
person regarding the proposed rule amendments.

Pursuant to Section 121.39 of the ORC, DAPC  
was required to consult with interested parties  
affected by the rules before the Division formally  
adopts them. On June 8, 2017, these rules went out  
for a 31-day review to the interested parties.

All interested persons are entitled to

1 attend or be represented at the hearing and give  
2 written or oral comments on these rule changes. All  
3 oral comments presented at the hearing and all  
4 written statements submitted at the hearing or by  
5 the close of business on Tuesday, July 11, 2017,  
6 will be considered by Ohio EPA prior to final action  
7 on this rule. Written statements submitted after  
8 July 11, 2017, may be considered as time and  
9 circumstance permit but will not be a part of the  
10 official record for this hearing.

11 Comments about these rules should be  
12 directed to Mike Maleski at Ohio EPA, telephone  
13 number (614) 644-1961, e-mail michael.maleski -- or  
14 is it Maelski? Or Maleski? M-A-E-L or M-A-L-E?

15 MR. PAUL BRAUN: Maleski.

16 MS. PEELLE: M-A-L-E-S-K-I.

17 -- michael.maleski@epa.ohio.gov or mailed  
18 to Mike Maleski, Ohio EPA, Division of Air Pollution  
19 Control, Lazarus Government Center, PO Box 1049,  
20 Columbus, Ohio 43216-1049. Persons submitting  
21 comments electronically are encouraged to follow up  
22 with a hard copy via regular mail.

23 Questions and comments submitted during the  
24 public comment period will be responded to in a  
25 document known as a response to comments. Once a

1 final decision is made, the decision along with the  
2 response to comments will be made available to  
3 anyone who requests a copy.

4 The time is now 10:33 a.m. Seeing no one  
5 is present to provide testimony, we will go off  
6 record until 11:00 a.m.

7 (Recess taken.)

8 MS. PEELLE: The time is now 11:00 a.m.  
9 Seeing no requests for testimony, this hearing is  
10 adjourned.

11 (Thereupon, the hearing was concluded at  
12 11:01 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing  
is a true and correct transcript of the proceedings  
taken by me in this matter on Tuesday, July 11,  
2017, and carefully compared with my original  
stenographic notes.

Heather A. Piper, Registered  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My commission expires October 29, 2020.



## Division of Air Pollution Control Response to Comments Proposed Rule Language Comment Period

**Rule:** OAC Chapter 3745-17, "Particulate Matter Standards"

### **Agency Contact for this Package**

Division Contact: Michael Maleski, DAPC, 614-644-1961, [michael.maleski@epa.ohio.gov](mailto:michael.maleski@epa.ohio.gov)

Ohio EPA held a public hearing on July 11, 2017 regarding the proposed rules in OAC Chapter 3745-17. This document summarizes the comments and questions received at the public hearing and associated 30-day comment period, which ended on July 11, 2017.

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.

### **General**

**Comment 1:** American Electric Power (AEP) respectfully submits the following comments in response to Ohio EPA's proposed amendments to Ohio's particulate matter standards (Ohio Adm.Code Chapter 3745-17). AEP operates numerous facilities in Ohio including two coal-fired power plants. AEP's facilities are regulated by Ohio's Clean Air Act State Implementation Plan (SIP) and have a direct and substantial interest in the Ohio SIP's particulate matter standards.

The Environmental Committee of the Ohio Utility Group and the Ohio Chamber of Commerce are submitting detailed comments on the proposed rules. We support those comments and recommend Ohio EPA revise the rules as suggested in those submissions. **(John C. Hendricks, Director – AEP Air Quality Services)**

**Response 1:** We've included the comments and responses from the referenced entities below.



3745-17-03, "Measurement methods and procedures"

**Comment 2:** The Ohio Chamber also urges Ohio EPA to combine and broaden its new proposed subparagraphs (D) and (E) to allow alternatives to continuous opacity monitors (COMS) under 40 C.F.R. Part 51, Appendix P, Section 6, other than PM CEMS and parametric monitoring.

Ohio's opacity limits do not apply to "uncombined water" in a plume. See Ohio Adm.Code 3745-17-07(A)(2). Accordingly, when EPA Reference Method 9 compliance testing is employed to determine a source's visible particulate emissions, the observer must make his or her observation "at the point of greatest opacity in that portion of the plume where condensed water vapor is not present." EPA Test Method 9, § 2.3. See also EPA, *Visible Emissions Field Manual, EPA Methods 9 and 22*, § 2.3, at 12 (Dec. 1993) ("[t]here cannot be any condensed water vapor at the point of observation."). Similarly, if a COMS is employed to determine visible particulate emissions, the opacity monitor must be installed "where condensed water vapor is not present . . ." 40 C.F.R. Part 60, Appendix B, Performance Specification 1, Section 8.1(2)(i). See also 40 C.F.R. Part 60, Appendix F, Procedure 3, Section 4.0 ("Opacity cannot be measured accurately in the presence of condensed water vapor.").

As Ohio EPA is aware, this poses a problem for sources that have installed wet scrubbers to control their particulate and other regulated pollutant emissions. The presence of water vapor in the flue gas prevents COMS from correctly measuring opacity. See, e.g., 80 Fed. Reg. 37157, 37158 (June 30, 2015) (explaining that the installation of a wet scrubber on a coal-fired electric generating unit had "made monitoring of the opacity in accordance with the requirements of 40 CFR part 51, appendix P, section 3.1.1 infeasible. Specifically, water droplets contained in the flue gas could potentially result in the existing continuous opacity monitor's overstating the true opacity."); 40 C.F.R. Part 60, Appendix F, Procedure 3, Section 4.0 ("COMS opacity compliance determinations cannot be made when condensed water vapor is present, such as downstream of a wet scrubber without a reheater . . ."). Placing the COMS upstream of the wet scrubber is not a valid solution to this problem, because compliance with Ohio's opacity limits must be determined after emission from the stack. See Ohio Adm.Code 3745-15-01(M) (defining "emission" as "the act of releasing or discharging an air pollutant *into the ambient air* from any source") (emphasis added); Ohio Adm.Code 3745-17-07(A)(1) (setting limitations on visible particulate emissions "*from any stack*") (emphasis added).

Ohio EPA has proposed to resolve this problem by allowing such sources to request permission to either (1) install and operate a PM CEMS or (2) adopt and comply with an alternative monitoring plan based on parametric monitoring. See Proposed Ohio Adm.Code 3745-17-03(D)-(E). The Ohio

Chamber urges two slightly different solutions, however. The Ohio Chamber's suggested amendments to Ohio Adm.Code 3745-17-03, showing proposed red-lined revisions to Ohio EPA's proposed amendments to that rule, are attached to these comments.

The Ohio Chamber's first proposed amendment, set forth in the attachment as proposed Ohio Adm.Code 3745-17-03(D), would allow the owner or operator of an air contaminant source subject to 40 C.F.R. part 51, appendix P (such as a fossil fuel-fired steam generator with an annual average capacity factor greater than 30%) to request "alternative monitoring requirements" when the presence of condensed water vapor would prevent a COMS from accurately determining opacity. In effect, the Ohio Chamber's proposed language would combine Ohio EPA's new proposed subparagraphs (D) and (E) into a single subparagraph and broaden the language to allow "[p]eriodic manual stack tests, parametric monitoring \* \* \*, \* \* \* periodic USEPA method 9 visible emissions observations," or other alternative monitoring requirements not specifically listed. This amendment would give Ohio EPA the discretion to prescribe an alternative to COMS monitoring at Appendix P sources on a case-by-case basis, as provided in Section 6 of 40 C.F.R. Part 51, Appendix P, while providing those sources with more options than Ohio EPA's proposed language. **(Eric B. Gallon and Robert L. Brubaker, Porter, Wright, Morris and Arthur LLP, on behalf of Ohio Chamber of Commerce)**

**Response 2:**

Ohio EPA is aware of the issues for some sources that have installed wet scrubbers to control their particulate. As noted, those issues are what led Ohio EPA to prepare the proposed alternatives. Ohio EPA appreciates the commentor's suggestion to provide for an amendment that would give Ohio EPA the discretion to prescribe an alternative on a case-by-case basis. However, because this rule is contained in Ohio's State Implementation Plan (SIP), any case-by-case alternatives would necessitate review and approval by both Ohio EPA and U.S. EPA. Case-by-case alternative approval by U.S. EPA can be a lengthy process which is why Ohio EPA has spent extensive time as a part of this rulemaking working closely with entities and U.S. EPA to develop an alternative within the rule itself that would not necessitate a lengthy approval process. Ohio EPA believes retaining paragraphs (D) and (E) as options will be more helpful to provide quicker relief for sources in this situation, rather than subjecting them to a lengthy case-by-case review and approval process.

The commentor also provided a red-line of the rule with suggested changes.

**Comment 3:**

For Ohio Adm.Code 3745-17-03, the Ohio Chamber urges Ohio EPA to revise its proposed amendments to deem compliance with the particulate matter (PM) mass emission limits in the federal Mercury and Air Toxics

Standards (MATS Rule), 40 C.F.R. Part 63, Subpart UUUUU, to be compliance with Ohio's visible particulate emission (opacity) monitoring requirements for coal-fired electric generating units (EGUs).

The Ohio Chamber's second proposed amendment, set forth as proposed Ohio Adm.Code 3745-17-03(B)(1)(c), would deem compliance with the filterable particulate matter emission limits in the MATS Rule (40 C.F.R. Part 63, Subpart UUUUU) to be compliance with Ohio's opacity limits. As Ohio EPA knows, "[b]ecause there is a correlation between opacity and particulate matter emission levels, regulators use the degree of opacity as a proxy for the amount of particulate matter that a plant emits." *NRDC v. Ill. Power Res., LLC*, 202 F. Supp. 3d 859, 864 (C.D. Ill. 2016). See also *Bethlehem Steel Corp. v. United States Env'tl. Prot. Agency*, 782 F.2d 645, 648 (7th Cir. 1986) ("opacity \* \* \* is a proxy for particulate emissions; the more opaque the dust or smoke, the more particulates it can be expected to contain, on average."). Ohio's SIP recognizes that its opacity limitations are a proxy for its PM mass emission limits in two ways. First, Ohio's opacity limitations apply only to sources that are otherwise subject to PM mass emission limitations. See Ohio Adm.Code 3745-17-07(A)(3)(h). Second, Ohio EPA's SIP has special provisions to avoid the unintended result, in presumably rare cases, of an opacity standard more stringent than the associated mass emission limit for the same particulate emissions from the same source. Ohio Adm.Code 3745-17-07(C) calls for "equivalent visible particulate emissions" demonstrated to correspond to the mass-based limit on a case-by-case basis. Because Ohio's opacity limits are proxies for Ohio's PM mass emission limits, it makes sense to use compliance with the MATS Rule's PM mass emission limits as proof of EGUs' compliance with Ohio's opacity requirements.

The MATS Rule imposes a particulate mass emission limit of 0.03 lb/mmBTU for new, reconstructed, and existing coal-fired electric generating units. See 40 C.F.R. Part 63, Subpart UUUUU, Tables 1 and 2. In various *Federal Register* notices, EPA has acknowledged that "the contribution of filterable PM to opacity at these emission levels (less than 0.030 lb/mmBtu) is generally negligible, and sources with mass limits at this level or less will operate with little or no visible emissions (*i.e.*, less than 5 percent opacity)." 76 Fed. Reg. 18870, 18881 (Apr. 6, 2011), citing 74 Fed. Reg. 5072, 5073 (Jan. 28, 2009). See also 80 Fed. Reg. 37157, 37159 (June 30, 2015) (commenting that a coal-fired electric generating unit with a particulate matter emission limit of 0.03 lb/MMBtu would be "unlikely" to exceed its 20% opacity limit (6-minute average) before it exceeded its mass emission limit). Ohio EPA and EPA can be confident that any source compliant with the MATS Rule's 0.030 lb/mmBtu PM mass emission limit will also be compliant with Ohio's 20% opacity requirement. The Ohio Chamber therefore recommends that Ohio EPA deem compliance with the MATS Rule's PM mass emission limits to be proof of compliance with Ohio's opacity limits. We note that the MATS Rule

expressly ensures "continuous compliance" with the Rule's PM mass emission limits. See 40 C.F.R. § 63.10021 and 40 C.F.R. Part 63, Subpart UUUUU, Table 7. **(Eric B. Gallon and Robert L. Brubaker, Porter, Wright, Morris and Arthur LLP, on behalf of Ohio Chamber of Commerce)**

**Response 3:**

Ohio EPA received similar comments during the interested party phase of this rulemaking requesting that compliance with other federal rules, such as MATS, be considered compliance with Ohio's opacity rules. As explained in the previous response to comments, Ohio EPA cannot waive the requirements of OAC rule 3745-17-03(C) because other federal rules are applicable to the source. This rule establishes compliance monitoring requirements for certain large facilities to show compliance with Ohio opacity regulations developed to attain and maintain particulate matter standards as a part of Ohio's State Implementation Plan (SIP), not federal rules established for other purposes.

Furthermore, this approach would exempt sources from the opacity requirements of this rule which U.S. EPA has made clear would not be approvable as a part of Ohio's SIP. As explained in Ohio EPA's response to comments from the interested party review phase of this rulemaking, it is important to note that OAC rule 3745-17-03(D) cannot exempt facilities from complying with the visible emissions standards included in OAC rule 3745-17-07. U.S. EPA has stated that any alternative that exempts a source from the opacity limits in OAC rule 3745-17-07(A) would not be approvable as a part of Ohio's SIP. Per OAC rule 3745-17-03(B)(1), U.S. EPA Method 9 or COMs are the compliance methods for the visible emissions limitations in OAC rule 3745-17-07. Note, Ohio EPA's interested party draft of the rules required periodic Method 9 readings. As a result of comments, Ohio EPA removed OAC rule 3745-17-03(D)(4), which included the requirement to perform routine U.S. EPA Method 9 visible emission readings as part of this alternative. However, although Ohio EPA is not requiring routine Method 9 readings because the facility will be complying with the proposed CEMS and PM emissions limitations established in this paragraph, if a Method 9 reading were to occur in the future it would continue to be a method of compliance determination.

The commentor also provided a red-line of the rule with suggested changes.

**Comment 4:**

For some years, the Utilities have proposed that Ohio EPA revise the particulate SIP and remove the requirement to install COMs, as listed in OAC 3745-17-03(C)(I). As stated in our May 21, 2012 comments and our July 8, 2016 comments on the same rule, the installation of scrubbers on most, if not all, coal fired EGUs makes the installation, certification, and operation of COMs nearly impossible without multiple variances. Further, what COMs can be installed and certified offer little, if any, useful data as

to actual particulate emissions, as almost all of them have a scrubber installed and operating behind the COM. The current version of the SIP, now close to forty years old, requires revision.

Ohio EPA's June 1, 2017 proposal to revise the particulate SIP, specifically OAC 3745- 17-03, represents progress by Ohio EPA, but greater change is needed. Ohio EPA should draft an alternative to the requirement for Appendix P sources to install and operate a COM that is preferable to the current requirement for both the regulated community and Ohio EPA.

As the Ohio Particulate SIP is now written, all large coal fired electric generating boilers operate COMs. However, because of the installation of additional controls, such as SCR and scrubber technology, the COMs no longer provide the Agency with useful or meaningful data related to a unit's compliance with their opacity limit. The data are not credible evidence of any actual emissions. Consequently, it would benefit Ohio EPA to replace this requirement with an alternative that provides useful data.

The alternatives as proposed in this rulemaking do not provide an appealing or reasonable approach for removing the COM requirements for EGUs. As such, few units are likely to select either alternative. If Ohio EPA wants to encourage permittees to implement more accurate and reliable monitoring of PM emissions, it should consider additional revisions.

OAC 3745-17-03(D) proposes to allow EGUs to not operate a COM if they install and use a PM CEM. However, Ohio EPA has not addressed the issue of measurements or readings during startup or shutdown. The current opacity rules exempt exceedances of the opacity limit during startup/shutdown. While the PM rules do not have a similar exemption, up to now this has not been an issue as the only compliance method, a stack test, was never performed during startup/shutdown conditions.

PM CEMs are not calibrated to measure accurately during startup/shutdown conditions (and it is difficult to imagine any parametric monitoring protocol that would accurately measure PM emissions either). Ohio EPA needs to revise (D) to specifically state that CEM readings will not be representative of emissions during startup/shutdown. This is NOT the same as stating that Ohio EPA is creating an exemption for those emissions. The Utilities are not suggesting the Agency create a new startup/shutdown exemption for the PM emissions. The Utilities are requesting Ohio EPA to merely state in the rule that any readings from a PM CEMs during startup/shutdown will not be used for compliance enforcement. **(Michael E. Born, Shumaker, Loop & Kendrick, LLP, on behalf of the Utilities)**

**Response 4:** Ohio EPA believes the alternatives provided will be desirable to some facilities. The commentor's main concern seems to be regarding measurements or readings during startup or shutdown. The commentor notes current opacity rules exempt exceedances of the opacity limit during startup/shutdown, while the PM rules do not have a similar exemption. As explained in Ohio EPA's response to comments from the interested party phase of this rulemaking, Ohio EPA has currently started efforts to revise these start-up and shutdown provisions in these rules in response to U.S.EPA's SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction (80 FR 33840). In U.S. EPA's SIP Call, U.S. EPA has stated these exemptions are no longer acceptable and, at this time, Ohio EPA does not know if the current exemption will be appropriate in the future. Regardless, U.S. EPA has expressed they will not approve this alternative if Ohio includes provisions that exempt periods of start-up and shutdown. Ohio EPA consulted with U.S. EPA regarding the commentor's request to "state that CEM readings will not be representative of emissions during startup/shutdown" and the commentor's position that this is "NOT the same as stating that Ohio EPA is creating an exemption for those emissions". U.S. EPA did not see a practical difference between stating the primary available evidence will not be used to assess compliance during startup and shutdown versus granting an exemption from the limits during those times. U.S. EPA viewed this as a significant relaxation of the rules and it would therefore not be SIP approvable.

Ohio EPA believes it is imperative this alternative compliance option gets approved as soon as possible in order for facilities to use this much needed provision. Placing the alternative compliance option proposed in this rule at risk of disapproval would not be a desirable outcome. Pending the resolution of the SIP Call, Ohio EPA may revisit this provision at a later date if U.S. EPA indicates additional flexibility could be approved into the alternative.

**Comment 5:** A second problem is the proposal to measure PM emissions on a daily average at a significantly lower level than the current limits set by the Ohio SIP. This is an unnecessary increase in stringency. The current Ohio SIP states that the emission limit for PM emissions from fuel burning equipment, OAC 3745-17-10 Appendix Figure 1, is 0.1 lbs/mmBtu. Ohio EPA's proposal lowers the SIP effectively to 0.03 lbs/mmBtu on a daily average. That is a significant increase in the stringency of the limit by itself.

There is no legal or technical basis for requiring EGUs that install and use a PM CEMs for monitoring PM to lower their emission limit from 0.1 lbs/mmBtu to 0.03 lbs/mmBtu on a daily average. The PM CEM is continuous. Ohio EPA would go from periodic stack tests to demonstrate direct compliance of PM limits to ongoing, continuous measurement by a

CEM. This is a significant increase in the monitoring of PM emissions. There is no need to tighten the stringency of the limit at the same time.

Further, Ohio EPA should recognize that all of these units already comply with a much more stringent limit pursuant to the MATS rules: All of the EGUs subject to Appendix P must now comply with the 0.03 lbs/mmBtu limit as determined by a CEM on a 30-day rolling average or quarterly stack test. Point being, MATS compliance assures the PM emissions from these units are already significantly below the 0.1 lbs/mmBtu limit. Requiring additional monitoring to replace the use of COMs is not necessary. **(Michael E. Born, Shumaker, Loop & Kendrick, LLP, on behalf of the Utilities)**

**Response 5:** OAC 3745-17-10 Appendix Figure 1 requires a compliance with a range of limitations, including 0.1 lbs/mmBtu, depending upon the location of the source. However, compliance with these limitations is determined via Method 5 which is determined as a 3-hour average. The limitation proposed in Ohio's alternative to COMs monitoring, 0.03 lbs/mmBtu, is a daily average limitation. Therefore, these limitations are not directly comparable. As the commentor has noted, all of these units already comply with the MATS limitation. In addition, this alternative compliance option is the same compliance option as included 40 CFR 60.42, which also requires facilities to comply with the same 0.030 lbs/mmBTU particulate emissions limit. Therefore, this is not a new emissions limit for facilities opting to comply with this rule. U.S. EPA has expressed that this emissions limit needs to be included in Ohio's rules in order to obtain an approvable additional compliance option as a part of the SIP. In addition, Section 110 of the Clean Air Act and R.C. 3704.03(E) does not need to be addressed for an alternative emissions limit. Any facility can choose to continue to comply with the original SIP requirements.

**Comment 6:** As for Ohio EPA's other alternative, described in (E), which does not require the use of CEMs, the Agency should reconsider the use of parametric indicators for direct compliance. COMs measuring opacity are not demonstrating direct compliance of the PM limit. Any parametric monitoring for COMs should not either. All affected EGUs not using a PM CEM are complying with PM limits under MATS using a variety of methods, including frequent stack testing. These approaches are sufficient for U.S. EPA in determining ongoing compliance with PM limits without the benefit of either a CEM or a COM. Ohio EPA should adopt a similar approach for units not opting to install a PM CEMs. **(Michael E. Born, Shumaker, Loop & Kendrick, LLP, on behalf of the Utilities)**

**Response 6:** This alternative provision is an alternative approved by U.S. EPA for a non-EGU source that is currently operating under this alternative. This entity was required by U.S. EPA to request the alternative be incorporated into Ohio's SIP. Rather than include the provision as only applicable to

this specific source, Ohio EPA crafted the language in a manner that any other entity that desires to take advantage of this alternative can do so. EGUs that do not desire this alternative can take advantage of the alternative provided in paragraph (D).

3745-17-08, "Restriction of Emission of Fugitive Dust"

**Comment 7:** And for Ohio Adm.Code 3745-17-08, the Ohio Chamber urges Ohio EPA to amend the rule to remove redundant, unnecessary, and confusing language and to conform to the limits on the agency's authority to amend existing Title V permits to include new, substantive requirements for the control of fugitive dust.

Subparagraph (A)(2) of Ohio Adm.Code 3745-17-08, as currently written, states that if the Director finds "probable cause \* \* \* to believe" that a fugitive dust source is causing or contributing to a nuisance, the Director may require the fugitive dust source's owner or operator to: (1) apply for and obtain a permit to operate under Ohio Adm.Code 3745-35-02; and/or (2) "submit and implement a control program which will bring the fugitive dust source into compliance with" paragraph (B). (Paragraph (B) requires certain sources to take or install "reasonably available control measures [RACM] to prevent fugitive dust from becoming airborne.") As Ohio EPA explained in its Response to Comments, Ohio EPA has proposed to amend subparagraph (A)(2) "to replace the reference to the rescinded OAC rule 3745-35-02 for operating permits with OAC rules 3745-31 and 3745-77, which are the[ ] current regulation[s] for operating permits." Ohio EPA has further explained that "[t]his rule will not require a source to submit a Title V permit application if it is not a Title V source."

The Ohio Chamber urges Ohio EPA to omit both the current rule's obsolete reference to permits to operate and the proposed amendment to reference permits-to-install and operate and Title V permits. The pertinent provision of subparagraph (A)(2), both as written and as Ohio EPA proposes to amend it, serves no purpose.

The amended rule would give the Director two options when dealing with a fugitive dust source that Ohio EPA considers to a probable nuisance (assuming, without agreeing, that there is a legal basis for the "probable nuisance" test). The second option – requiring the source to submit and implement a fugitive dust control program – could apply to any fugitive dust source. But the first option – requiring the source to apply for and obtain an operating permit – would apply, on its face, only to those sources that are already required to have, but do not currently have, a Title V permit or permit-to-install and operate.

Two provisions in the regulatory language make this evident. First, like the existing rule, Ohio EPA's proposed amendment says nothing about



requiring the source to apply for and obtain a *modification* or *revision* to an existing operating permit. Second, Ohio EPA's proposed amendment specifies that the Director could only require the owner or operator of a fugitive dust source to apply for and obtain an operating permit "in accordance with Chapter 3745-77 of the Administrative Code" or "in accordance with Chapter 3745-31 of the Administrative Code." This, coupled with Ohio EPA's Response to Comments on the draft rule amendment, makes clear that Ohio EPA does not believe it could require a source to obtain an operating permit unless the agency's rules already require one. (Of course, any rule requiring a permit would of course also need to be authorized by statute.) Yet Ohio EPA already has the authority to bring an enforcement action against a source that lacks a required operating permit. Whether the source is causing or contributing to a probable fugitive dust nuisance is irrelevant to the agency's enforcement authority. For this reason, the first option serves no purpose.

If Ohio EPA believes the first option would allow the agency to require modifications or revisions to an existing Title V permit or permit-to-install and operate, then Ohio EPA must alter its proposed amendment to make that clear. However, the Ohio Chamber notes that the Director cannot require a Title V permit holder to incorporate new, substantive requirements, such as source-specific RACM requirements, directly into the federally enforceable section of its permit. See *Columbus Steel Castings Co. v. Jones*, Case No. ERAC 255266, 2011 Ohio ENV LEXIS 11, at ¶¶ 60-63 (Sept. 29, 2011); *Columbus Steel Castings Co. v. Nally*, 10th Dist. No. 11AP-932, 2012-Ohio-4417, ¶¶ 35-40. Such requirements could be incorporated only into the state-only enforceable section of a Title V permit.

**(Eric B. Gallon and Robert L. Brubaker, Porter, Wright, Morris and Arthur LLP, on behalf of Ohio Chamber of Commerce)**

**Response 7:**

The language incorporated here is consistent with language in all other rules governing air pollution control that address the need for specific requirements to be incorporated in Ohio's permitting program. Ohio EPA believes the language as revised is appropriate and consistent with past and current intent. Where the director finds probable cause of a nuisance, the director "may:

- Impose requirements in a Title V permit (and therefore require the source to apply to have those requirements incorporated) for sources subject to the Title V program, or
- Impose requirements in a PTIO (and therefore require the source to apply to have those requirements incorporated) for sources subject not subject to the Title V program, or
- require submittal and implementation or a control program.

Ohio EPA believes it is clear that only in cases of where a source is subject to the Title V program will the requirements be placed in a Title V permit. Furthermore, the regulations in OAC 3745-77 make it clear that

new substantive requirements cannot be established in a Title V permit and those requirements do not need to be reiterated in all other rules of this Chapter with requirements to be placed in Title V permits. In cases where a requirement is determined to be a new substantive requirement, Ohio EPA would follow normal procedure to first issue those requirements in a permit-to-install (PTI) prior to incorporation into the Title V permit. Rules governing the requirements for PTIs and PTIOs are contained in OAC 3745-31 and also do not need to be reiterated in this rule.

3745-17-09, "Restrictions on particulate emissions and odors from incinerators"

**Comment 8:** (B) Emission Limitation- the word 'salvageable material' is no longer included in the emission limits which are listed under (B)(1) and (B)(2) and RAPCA is concerned about the potential implications as follows: There are facilities in RAPCA's jurisdiction that have historically included the salvageable material when determining compliance. One example includes Dayton Industrial Drum, facility ID 0857040583, which has tested and based compliance on the weight of both the refuse and salvageable material. The change in the rule may cause them to be in noncompliance.  
**(RAPCA Local Air Agency)**

**Response 8:** As a result of previous comments submitted by another local air agency indicating there has always been a lot of confusion when applying the limits in OAC 3745-17-09 to burn-off ovens, Ohio EPA removed the term "salvageable material." However, upon further investigation with other field office experiences, Ohio EPA has determined it is best to retain the term to ensure issues like RAPCA has raised are not realized, and to address the confusion through other means. For the same reason, Ohio EPA has also decided not to make the revision to the definition of salvageable material and has removed the proposed language in OAC rule 3745-17-01 (Definitions).

**End of Response to Comments**