



Via electronic filing at www.regulations.gov

EPA Docket Center (EPA/DC)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OA-2017-0190

Re: Evaluation of Existing Regulations
82 Fed. Reg. 17,793 (April 13, 2017)

Dear Administrator Pruitt and Staff:

In response to the above-referenced docket, American Municipal Power, Inc. (AMP) and the Ohio Municipal Electric Association (OMEA) respectfully submit the following comments for the record.

I. Background on AMP/OMEA

AMP is a non-profit wholesale power supplier and service provider for 135 members, including 134-member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland. It also represents the Delaware Municipal Electric Corporation, a joint action agency with nine members headquartered in Smyrna, Delaware. These member utilities combined serve more than 650,000 customers. AMP's core mission is to be public power's leader in wholesale energy supply and value-added member services. It offers member municipal electric systems the benefits of scale and expertise in providing and managing energy services.

The OMEA was formed in 1962 and represents the state and federal legislative interests of AMP and 80 Ohio municipal electric systems. The OMEA is closely aligned with AMP and shares AMP's concerns and comments outlined herein.

AMP's diverse energy portfolio makes it a leader in deploying power assets that include a variety of base load, intermediate, and distributed peaking generation, using hydropower, wind, landfill gas, solar, and fossil fuels, as well as a robust energy efficiency program. AMP's current fossil fuel assets consist of a 368 MW ownership share of the 1,600 MW coal-fired Prairie State Generating Co., located in Lively Grove, Illinois, as well as a nominal 700 MW (fired) natural gas combined cycle facility, AMP

DELAWARE DELAWARE MUNICIPAL ELECTRIC CORPORATION **INDIANA** CANNELTON **KENTUCKY** BENHAM • BERA • PADUCAH • PARIS • PRINCETON • WILLIAMSTOWN
MARYLAND BERLIN **MICHIGAN** CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** AMHERST • ARCADIA • ARCANUM • BEACH CITY • BLANCHESTER
BLOOMDALE • BOWLING GREEN • BRADNER • BREWSTER • BRYAN • CAREY • CELINA • CLEVELAND • GLYDE • COLUMBIANA • COLUMBUS • CUSTAR • CUYAHOGA FALLS • CYGNET • DELTA DESHLER
• DOVER • EDGERTON • ELDERADO • ELMORE • GALION • GENOA • GEORGETOWN • GLOUSTER • GRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD • HUDSON • HURON
• JACKSON • JACKSON CENTER • LAKEVIEW • LEBANON • LODI • LUCAS • MARSHALLVILLE • MENDON • MILAN • MINSTER • MONROEVILLE • MONTPELIER • NAPOLEON • NEW BREMEN • NEW
KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER • PIQUIA • PLYMOUTH • PROSPECT REPUBLIC • SEVILLE • SHELBY
• SHILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • TONTOGANY • VERSAILLES • WADSWORTH • WAPAKONETA WAYNESFIELD • WELLINGTON •
WESTERVILLE • WHARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANNON • EAST CONEMAUGH • ELLWOOD CITY
• EPHRATA • GIRARD • GOLDSBORO • GROVE CITY • HATFIELD • HOOVERVILLE • KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERRY • MIFFLINBURG • NEW WILMINGTON • PERKASIE •
QUAKERTOWN • ROYALTON • SAINT CLAIR • SCI HUYLEKILL HAVEN • SMETTIPORT • SUMMERHILL • WAMPUM • WATSONTOWN • WEATHERLY • ZELIENOPE **VIRGINIA** BEDFORD •
DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS **WEST VIRGINIA** NEW MARTINSVILLE • PHILIPPI

Fremont Energy Center in Fremont, Ohio. AMP assets also include nine natural gas and 51 diesel peaking units and 22 emergency generation units located throughout Ohio. AMP's member and generation asset footprints do not match; in other words, we have generating assets in states where we have no members and members in states where we have no generating assets. AMP's members and generation are largely located within the footprints of two regional transmission organizations: PJM Interconnection, LLC, and the Midcontinent Independent System Operator, Inc.

Because of AMP's structure as a non-profit wholesale power provider, it closely follows regulatory initiatives that may impact the costs and reliability of our members' energy and capacity supply. Ultimately, the policies that impact our members directly impact their residential, commercial, and industrial customers.

II. AMP's and the OMEA's Comments on the Evaluation of Existing Regulations

The primary concern of AMP and the OMEA involves air issues, as explained in greater detail below. AMP and the OMEA have construed "regulations" to extend to policies and other formal and informal actions of the agency that have an impact on our members.

a. Cross-State Air Pollution Rule (CSAPR)

CSAPR, also known as the Transport Rule, is EPA's attempt to reduce cross-state air emissions pursuant to the "good neighbor" provisions of the Clean Air Act.¹ CSAPR establishes several different emissions trading programs regulating NO_x and SO₂ emissions from power plants in the eastern United States. In 2016, EPA finalized the CSAPR Update Rule, which modified only the ozone season NO_x emissions trading program to account for the 2008 ozone National Ambient Air Quality Standard (NAAQS), and to make other, more stringent changes.²

AMP and the OMEA believe that significant modifications to CSAPR are warranted. It is an unbalanced and unfair program that has been demonstrated to have minimal impact on the ability of downwind states to comply with the NAAQS. Generally, AMP and the OMEA dispute EPA's prior cost-benefit analyses and the modeling underlying CSAPR emissions budgets and reductions, and urge EPA to revisit this data as part of its reevaluation of CSAPR. Specifically, AMP and the OMEA ask EPA to reevaluate its base case modeling for 2017 to consider all emission reduction programs legally mandated to be in effect in 2017, which EPA declined to do in the final CSAPR Update Rule.

Through reevaluation of the rule, AMP and the OMEA encourages EPA to provide a more thoughtful and balanced cost-benefit approach to emissions reductions that includes potential non-point source reductions in downwind states.

b. Maximum Achievable Control Technology (MACT) Once-In-Always-In Policy (OIAI) Policy

Through the OIAI Policy, EPA has taken the position that "once [a source] is deemed a major source of hazardous air pollutants (HAPs) at the time of the "first compliance date," that source is precluded from changing its "status as a major source."³ This was first articulated in a 1995 memorandum by EPA⁴ and applied countless times since, by both EPA and delegated states. In 2007,

¹ 40 C.F.R. Part 97.

² 81 Fed. Reg. 74,504 (Oct. 26, 2016).

³ *Wildearth Guardians v. Lamar Utilities Bd.*, 932 F. Supp. 2d 1237, 1245 (D. Colo. 2013).

⁴ "Potential to Emit for MACT Standards – Guidance on Timing Issues," John S. Seitz (May 16, 1995).

EPA proposed eliminating the OIAI policy.⁵ However, this attempt was thwarted by a rider to a 2008 budget bill.

AMP and the OMEA ask EPA to rescind the OIAI Policy according to its 2007 proposal. A major MACT source should be able to become an area source at any time by limiting its potential to emit HAPs to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. In other words, the OIAI Policy unfairly denies sources the flexibility to voluntarily limit their potential emissions to avoid MACT requirements after the compliance date of a particular MACT standard. The OIAI Policy also has the unintended consequence of removing any incentive for sources to reduce their HAP emissions to below major source levels. The Policy has a tenuous basis in the language of the Clean Air Act and should be eliminated pursuant to EPA's proposed rationale for doing so from 2007.

c. **National Ambient Air Quality Standards**

The Clean Air Act requires EPA to periodically review and revise the NAAQS for criteria pollutants.⁶ But EPA's process for revising the NAAQS is broken, for several reasons. The Clean Air Act delegates part of the NAAQS revision process to the Clean Air Science Advisory Committee (CASAC), but this Committee has selectively chosen the science appropriate for revising the NAAQS. This has led EPA to analyze the NAAQS by relying increasingly on epidemiological health studies rather than toxicological studies. This process has resulted in an impracticable, revised ozone standard of 70 ppb⁷ (which is currently subject to litigation and delay⁸).

AMP and the OMEA urge EPA to amend its revision process for the NAAQS. First, we ask that monitoring data serve as the default data in all issues concerning the NAAQS. If modeling data controls decisions instead of real monitoring data, then area redesignations to NAAQS non-attainment can occur even when actual monitoring data show NAAQS attainment.

In addition, we would ask that CASAC rely on a more transparent NAAQS review process, based on replicable scientific studies. Studies that CASAC relies upon should be more readily available as attachments to the recommended NAAQS standard and be replicable per the Administrative Procedures Act (APA). AMP and the OMEA strongly support the challenges to the revised 2015 ozone standard that are a direct result of the faulty NAAQS review and revision process.

d. **National Emissions Standards for Hazardous Air Pollutants (NESHAPs) and New Source Performance Standards (NSPS) for Reciprocating Internal Combustion Engines**

EPA has promulgated several extremely complex rules governing emissions from reciprocating engines: the NESHAP for Reciprocating Internal Combustion Engines (RICE),⁹ the NSPS for Stationary Compression Ignition Engines,¹⁰ and the NSPS for Spark Ignition Internal Combustion Engines.¹¹ A 2015 D.C. Circuit Court of Appeals decision vacated parallel provisions in all three of these regulations that authorized operation of emergency engines during two different situations: 1) emergency demand

⁵ 72 Fed. Reg. 69 (Jan. 3, 2007).

⁶ 42 U.S.C. 7408, 7409.

⁷ 40 C.F.R. 50.19.

⁸ *Chamber of Commerce, Murray Energy v. EPA*, No. 15-1385 (D.C. Cir.).

⁹ 40 C.F.R. Part 63, Subpart ZZZZ.

¹⁰ 40 C.F.R. Part 60, Subpart IIII.

¹¹ 40 C.F.R. Part 60, Subpart JJJJ.

response during an Energy Emergency Alert Level 2; and 2) when there is a deviation of voltage or frequency of five percent or greater below standard voltage or frequency.¹²

AMP and the OMEA request that EPA modify the rules governing reciprocating engines to streamline and simplify the requirements. These rules have widespread applicability to sources throughout the country but are notoriously complicated which leads to varying compliance interpretations across regulatory agencies and entities attempting, in good faith, to comply with the rules. We would urge EPA to revise these rules so that their precise applicability provisions, limitations, and requirements are more carefully and clearly drafted. We also urge EPA to revisit ways in which to reauthorize the emergency engine provisions that the D.C. Circuit vacated. The second type of operating scenario the court vacated – essentially to preempt a system emergency – is a particularly important scenario for AMP and its members.

e. New Source Review (NSR) Issues

Both the Prevention of Significant Deterioration (PSD) and Non-Attainment NSR regulations include a “physical change or change in the method of operation” (PCCMO) within the definition of a “major modification.”¹³ While a PCCMO is not defined, the rules contain an exception to a “PCCMO” for activities qualifying as “routine maintenance, repair, and replacement” (RMRR). EPA has not promulgated rules defining RMRR, and while it has issued extensive guidance, and courts have addressed the issue on multiple occasions, determining what constitutes RMRR remains a complex case-by-case determination with particular concerns for members of AMP and the OMEA.

AMP and the OMEA request that EPA exempt from the definition of “major modification” within the PSD and Non-Attainment NSR regulations energy efficiency projects that reduce the intensity of air emissions. We would also urge EPA to clarify the RMRR exemption, ideally through rulemaking, as to the acceptable factors related to cost, purpose, and frequency for projects qualifying as RMRR. Our members bear a risk that EPA, a delegated state, or a citizens group will challenge an RMRR determination after an activity has begun or has been completed, threatening significant capital expenditures that are simply aimed at maintaining existing equipment in good operating condition.

f. Regional Haze Rules

The Clean Air Act requires EPA and the states to reduce regional haze in certain national parks and wilderness areas.¹⁴ EPA has promulgated rules that demand “one size fits all” requirements for state regional haze plans and that insist on stricter federal requirements for such plans.¹⁵ EPA has also rejected state regional haze plans, which is the subject of ongoing litigation.¹⁶ As it has done with the NAAQS, EPA has relied increasingly on modeling instead of actual monitoring data to assess compliance with regional haze goals.

AMP and the OMEA urge EPA to reconsider its rejection of state regional haze plans and to revise its rules regarding state authority in the regional haze process. We also urge EPA to rely more on monitoring instead of modeling data, which will prevent imposing costly requirements that do not actually improve visibility.

g. Startup, Shutdown, and Malfunction (SSM) Provisions

¹² *Delaware v. EPA*, 785 F.3d 1 (D.C. Cir. 2015) (vacating 40 C.F.R. 60.4211(f)(2)(ii)-(iii), 60.4243(d)(2)(ii)-(iii), and 63.6640(f)(2)(ii)-(iii)).

¹³ 40 C.F.R. 51.166(b)(2)(iii), 52.21(b)(2)(iii)(a).

¹⁴ 42 U.S.C. 7491, 7492.

¹⁵ 40 C.F.R. 51.308 and 51.309; see 82 Fed Reg. 3,082 (Jan. 10, 2017).

¹⁶ *Texas v. EPA*, No. 16-60118 (5th Cir.).

EPA has required states to revise their State Implementation Plans to eliminate provisions providing for certain exemptions from emissions requirements during startup, shutdown, and malfunctions.¹⁷ This action is significant, affecting 36 states (including almost all within AMP's footprint). EPA's action is the subject of litigation currently being stayed by the D.C. Circuit pending EPA's review,¹⁸ and the related issue of SSM under the NESHAP program is the subject of a petition for writ of certiorari to the Supreme Court by AMP.¹⁹

AMP and the OMEA urge EPA to reevaluate and vacate its final action concerning SSM provisions. The state SSM provisions are a proper exercise of state authority and reflect the cooperative federalism inherent in the Clean Air Act. While there is negative case law concerning these issues, we would also ask for clarity from EPA (ideally through rulemaking) that unavoidable, *de minimis* SSM events are not considered violations of emissions limitations or standards under the Clean Air Act.

III. Conclusion

While by no means exhaustive, the comments provided represent EPA regulations and policies that are the most concerning to AMP and the OMEA. We thank EPA for the opportunity to provide these comments. If you need any additional information, please do not hesitate to contact us.

Respectfully submitted,



Jolene M. Thompson
AMP Executive Vice President
& OMEA Executive Director
jthompson@amppartners.org
(614) 540-1111

¹⁷ 80 Fed. Reg. 33,840 (June 12, 2015).

¹⁸ *Walter Coke Inc. v. EPA*, No. 15-1166 (D.C. Cir.).

¹⁹ *American Municipal Power, Inc. v. EPA*, No. 16-1168 (petition filed March 27, 2017).