



February 2, 2012

Via Electronic Filing: [oei.docket@epa.gov](mailto:oei.docket@epa.gov)  
EPA Docket Center  
U.S. Environmental Protection Agency  
Mail Code: 2822T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-0001

**RE: Notice of Proposed Settlement Agreement  
National Emission Standards for Hazardous Air Pollutants for Reciprocating  
Internal Combustion Engines (Docket: EPA-HQ-OGC-2011-1030)**

Dear Sir or Madam:

On behalf of the organization and its membership, American Municipal Power, Inc. (collectively AMP) respectfully submits these comments to be included in the docket regarding the Proposed Settlement Agreement to address lawsuits filed by EnerNOC, Inc., EnergyConnect, Inc., CPower, Inc., and Innoventive Power, LLC in the U.S. Court of Appeals for the District of Columbia Circuit: *EnerNOC, et al v. EPA*, No. 10-1090 (DC Cir.) and *EnerNOC, et al v. EPA*, No. 10-1336 (D.C. Cir.). The Notice of the Proposed Settlement was published in the *Federal Register* on January 4, 2012 (Docket: EPA-HQ-OGC-2011-1030). See 77 Fed. Reg. 282.

**Background on AMP**

AMP is a not-for-profit corporation founded in 1971 and headquartered in Columbus, Ohio. AMP's principal mission and purpose is to provide cost-effective, reliable power supply to 129 member municipal electric systems in seven states (Delaware, Kentucky, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia). AMP's member municipal electric systems are owned by their customers, and the vast majority of AMP's members are communities with fewer than 5000 residents.

AMP and its member communities maintain a diversified portfolio of power generation assets and are regional leaders in the deployment of renewable generation. For example, AMP built and currently operates the 42 megawatt (MW) Belleville Hydroelectric Plant on the Ohio River as well as Ohio's first utility-scale wind farm. AMP is also actively

developing numerous other renewable generation projects, including six run-of-the-river hydroelectric projects along the Ohio River totaling approximately 400 MW, and several solar and landfill gas projects.

In addition to being a regional leader in renewable power development, AMP also has a history of operating fossil-fueled base load electric generating units (EGUs) in Ohio, and several AMP members operate municipally owned coal-fired power plants. These members (including the Ohio cities of Dover, Hamilton, Orrville, Painesville, and Shelby and the Michigan cities and villages of Clinton, Coldwater, Hillsdale, Marshall, and Union City [collectively Michigan South Central Power Agency] as well as Wyandotte, Michigan) operate small utility boilers serving municipally-owned EGUs. AMP and many of its members also own or operate distributed generation units and other facilities that utilize reciprocating internal combustion engines (RICE units), which are now subject to the rules establishing National Emission Standards for Hazardous Air Pollutants ("NESHAP") and which are the subject of the Proposed Settlement Agreement available for comment. Most of AMP's municipal members qualify as small governments and/or small utilities for the purposes of the Small Business Administration protections under the Regulatory Flexibility Act.

AMP understands the challenges of both providing cost-effective power and developing a wide portfolio of electric generation resources. AMP's diversified portfolio of generation assets has not been developed overnight; rather, it took years of planning, permitting, and construction before each electric generation asset was able to commence commercial operation. The addition of distributed generation units at strategic locations across AMP's geographic footprint has helped to ensure the continued safe and reliable operation of our base load and renewable generation units alike, particularly as backup units during weather or other emergency situations, including times when the local distribution system has experienced constraints.

### **Comments on the Proposed Settlement Agreement**

AMP generally supports the Proposed Settlement Agreement and views it as an important step forward in bringing the lengthy RICE NESHAP rulemaking process to an acceptable conclusion. AMP does, however, have several specific comments on the Proposed Settlement Agreement – including the provisions in the Proposed Settlement Agreement related to USEPA's upcoming Notice of Proposed Rulemaking on this topic (NOPR, to be issued by USEPA by April 20, 2012).

Per the Proposed Settlement Agreement, the purpose of the NOPR is to propose revisions to the RICE NESHAP (as well as the stationary internal combustion engine new source performance standards – ICE NSPS) "to allow owners and operators of emergency stationary internal combustion engines to operate emergency stationary internal combustion engines in emergency conditions, as defined in those regulations, as part of an emergency demand response program for 60 hours per year or the minimum hours required by the Independent System Operator tariff, whichever is less." Proposed Settlement Agreement at Paragraph 2. The Proposed Settlement Agreement also states that the NOPR "may also allow for more hours of operation." *Id.*

AMP appreciates USEPA's recognition in the Proposed Settlement Agreement of the need to align the hours allowed under the RICE NESHAP and ICE NSPS for emergency demand response to the existing requirements of various regional transmission organizations (RTOs); AMP included comments on this point in its February 2011 filing on the reconsideration of the RICE NESHAP rules (Docket: EPA-HQ-OAR-2008-0708). Those comments are hereby incorporated by reference. Per the statement in the Proposed Settlement Agreement that additional hours of operation may be allowed in the NOPR, AMP suggests that USEPA also allow units to run for as many hours that the RTO requires for periodic testing of the units, in addition to the up to 60 hours that the Proposed Settlement Agreement contemplates for emergency demand response. AMP estimates that an additional five (5) hours annually for such testing purposes would be adequate.

The Proposed Settlement Agreement does not explicitly address any extension of the compliance deadlines for the RICE NESHAP rules, even in light of the extensive delay that has occurred, first with the reconsideration process of the RICE NESHAP rules and now with the additional time allotted for the NOPR and final action under the Proposed Settlement Agreement. When reconsideration of certain key provisions in the RICE NESHAP rules was initiated over one year ago, USEPA retained the May 2013 date by which units must be in compliance. However, because many of the questions raised in the reconsideration process – that are still not fully resolved – relate directly to the specific treatment of certain units under “emergency” conditions, important decisions as to compliance with the rules has proven impossible for many units. This regulatory uncertainty justifies additional time for compliance. AMP proposes that compliance be delayed until at least November 2014 to allow affected units to determine their obligations under the RICE NESHAP and come into compliance.

In comments filed on the reconsideration of the RICE NESHAP rules (Docket: EPA-HQ-OAR-2008-0708) in February 2011, AMP outlined a number of issues relative to that proposal, some of which remain of concern. In summary, AMP continues to have concerns that the RICE NESHAP rules, if left unmodified, could inadvertently adversely impact local and regional power supply and system operations. The essential, though relatively infrequent, operation of these units (in terms of hours per year) attests to the need to modify the rule's definition of “emergency” to accommodate these units' role in maintaining a safe and reliable electric generation, distribution, and transmission system. Further, by addressing the “emergency” definition, USEPA can address some of AMP's concerns regarding the cost of complying with the new rule and potential negative impacts on AMP's customers. USEPA's Proposed Settlement Agreement appears to offer a major improvement over the original final RICE NESHAP rules, but other details remain to be addressed.

AMP looks forward to the April 2012 NOPR and will comment in greater detail at that time. Thank you for your consideration of these brief comments.

On Behalf of the Members,

A handwritten signature in black ink that reads "Jolene M. Thompson". The signature is written in a cursive, flowing style.

Jolene M. Thompson  
AMP Senior Vice President

cc: AMP Board of Trustees  
Marc S. Gerken, P.E., President & CEO, AMP  
John W. Bentine, General Counsel, Taft Stettinius & Hollister LLP  
April R. Bott, Environmental Counsel, Bott Law Group LLC