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**Via Electronic Filing: [paul.braun@epa.ohio.gov](mailto:paul.braun@epa.ohio.gov)**

Paul Braun  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
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**Re: Request for Interested Party Comments: Ohio Administrative Code (OAC) Chapter 3745-31**

Dear Mr. Braun:

On behalf of our member communities and their residential, commercial, and industrial customers, I thank you for this opportunity to provide interested party comments on the upcoming revisions to OAC Chapter 3745-31 prior to formal proposal.

**Background on AMP/OMEA**

American Municipal Power, Inc. (AMP) is a non-profit wholesale power supplier and service provider for 135 members, including 85 municipal electric system members in the state of Ohio. AMP's mission is to serve Members through public power joint action, innovative solutions, robust advocacy and cost-effective management of power supply and energy services. AMP offers a wide variety of services to help member communities improve the quality of municipal utility services to their customers. AMP provides these services on a cooperative, nonprofit basis for the mutual benefit of member communities.

AMP members receive their power supply from a diversified resource mix that includes wholesale power purchases through AMP and the open market, and energy produced at AMP and member-owned generating facilities utilizing fossil fuels, hydroelectric, wind, solar and other renewable resources. Assets in Ohio include a nominal 700-MW (fired) natural gas combined cycle

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AMP Fremont Energy Center in Fremont, Ohio, a number of diesel and natural gas peaking units, and hydroelectric, solar and wind projects. AMP has actively worked over the past decade to diversify our power supply portfolio to include renewable resources.

The Ohio Municipal Electric Association (OMEA) represents the Ohio and federal legislative interests of AMP and member Ohio municipal electric systems. Although closely aligned with AMP, the OMEA is a separate, nonprofit entity guided by a 16-member Board of Directors. However, subsequent "AMP" references herein also represent the interests and comments of OMEA.

In recognition of our unique position as both a wholesale power supplier and services provider, as well as the owner and operator of electric generating assets, AMP offers the following comments regarding the proposed rule changes. The focus of these comments is on provisions that have the potential to substantively impact AMP and its members.

### **Restructuring**

AMP supports the restructuring of the definitions to provide clarity and needed organization that is lacking due to historical revisions to OAC Chapter 31. As mentioned by Ohio EPA, OAC Chapter 3745-31 contains an ever-increasing amount of Permit-by-Rule (PBR), permanent exemption changes and additions (and associated definitions). The changes in the Ohio EPA proposed rules effectively restructure the regulations for ease of use and adaptation to potential future changes.

In terms of the movement of the PBR provisions to new OAC 3745-31-30, AMP supports separating out the PBR provision from the permanent exemptions to better reflect their distinct purposes and provide clarity.

### **Permanent Exemptions (OAC 3745-31-03)**

While several of the new permanent exemptions being added to OAC 3745-31-03(B)(1) do not directly impact AMP, AMP supports the continued identification and inclusion of permanent exemptions for temporary and/or very small emitting sources. The continued expansion of the permanent exemptions allows the agency to direct limited resources at permitting more significant emission sources.

AMP strongly supports the inclusion of the new permanent exemption for temporary fuel burning equipment in new OAC 3745-31-03(mmm). However, one requirement of the exemption is that the actual emissions and the potential to emit (PTE) of the emergency source not exceed the PTE of the replaced sources. The rule would benefit from clarification on the time-period to be used when calculating the actual and potential emissions.

### **Permits by rule (PBR) (OAC 3745-31-30)**

Generally, AMP is supportive of state rule changes that result in better alignment with overlapping federal rules, when applicable. However, AMP finds the revisions incorporated into the emergency generator PBR, now located under OAC 3745-31-30(C)(2)(a), confusing as written. For example, OAC 3745-31-30(C)(2)(a)(iii) cites to sections of federal rule that do not appear to exist (*i.e.*, 40 CFR 60.4211(f)(4) and 40 CFR 60.4243(d)(4)). In other locations it appears that the proposed rule is attempting to mirror the federal rule, but is not completely consistent with the language in its federal counterpart (*i.e.*, OAC 3745-31-30(C)(2)(a)(v) appears intended to mirror the requirements under 40 CFR 63.6604 but does not). Moreover, in other sections it is unclear if the origin of the proposed term is federal rule or otherwise, as no citations regarding the origin are

provided (*i.e.*, OAC 3745-31-30(C)(2)(a)(iv), (v)(i), and (viii)). Thus, AMP requests Ohio EPA restructure the emergency generator PBR terms to provide additional clarification and to align more closely with their federal counterparts, where applicable. Also, AMP requests that Ohio EPA consider incorporating redundant requirements from the definition of emergency engine in OAC 3745.31-01(E)(3) into the PBR, since many of the rule paragraphs in the definition (for example OAC 3745-31-01(E)(3)(b)(i)-(vi)) are operationally focused and better suited for the new OAC 3745-31-30.

In addition, the emergency generator PBR includes a clarifying comment that certain options under the federal rules were not included in the state's proposed changes because they were vacated by the U.S. Court of Appeals for the District of Columbia Circuit under case number 13-1093. In response, AMP respectively requests that Ohio EPA maintain these regulatory options until U.S. EPA takes formal action to remove or modify them within the applicable federal rule.

### **New Source Review (NSR) Emissions Accounting Rule (definitions: OAC 3745-31-01(M)(3)**

AMP recommends that the agency take this opportunity to ensure that the approach embodied in U.S. EPA's Project Emissions Accounting rule promulgated on November 24, 2020 (85 Federal Register 74890) is fully reflected in Ohio EPA's rules. Before the November 2020 federal rule change, a facility could arguably only include project emission increases within Step 1 of the Major NSR applicability analysis. After this rule change, those same project emission decreases that were historically relegated to Step 2 can now be included with project emission increases in Step 1. This means that a project could possibly avoid being a "major project" and avoid triggering the Step 2 netting analysis. This applicability approach provides incentives for source owners or operators to implement emission reductions as a part of a project under review.

Furthermore, AMP recommends additional changes to the language to provide consistency within the state's rule as well as to better align with federal rule language. For example, while we recognize OAC 3745-31-01(M)(3) contains a provision for the "hybrid test", we suggest that it reflect the language of the federal rule to avoid confusion. In addition, both OAC 3745-31-01(M)(3)(c)(i) and (ii) reflect the emissions accounting rule by using the term "sum of the difference". However, the OAC 3745-31-01(M)(3)(c)(iii) language for the hybrid test still uses "sum of the emissions increases". As such, AMP suggests that the (M)(3)(c)(iii) language should be identical to the federal rule language (and that of (M)(3)(c)(i) and (ii)) and the "sum of the emissions increases" language be changed to the "sum of the difference" language as provided in (M)(3)(c)(iii) to avoid any confusion.

### **Termination Provisions (OAC 3745-31-07)**

AMP supports the clarification and expansion of the termination provisions to include a stay of the 18 months when a permit is appealed by a third party. However, the time-period for expiration in this provision is 18 months from the effective date of the permit plus the number of days between the date the permit was appealed and the date on which all appeals are resolved. Our concern is that the resolution of a permit appeal may involve the installation of control equipment or other actions necessitating time beyond this period. As such, extension options should be available to a permittee in this situation.

## Conclusion

We appreciate Ohio EPA's efforts to clarify and streamline provisions of OAC Chapter 3745-31, as well as add additional permanent exemptions. We ask that Ohio EPA continue to implement additional changes that ensure greater efficiency and predictability for our members, while continuing to protect human health and the environment. Thank you for this opportunity to provide input to the agency on the proposed action.

Respectfully Submitted



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