

OhioEPA
Division of Air Pollution Control

**Response to Comments
Draft Rule Language Comment Period**

Rule: OAC 3745-108, Ohio's CAMR program

Agency Contact for this Package

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Ohio EPA provided a 30 day comment period which ended on November 24, 2009. This document summarizes the comments and questions received during the comment period.

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.

Comment 1: After reviewing Ohio EPA's public notice, summary, and draft rule, the Ohio Utility Group and the following specified member companies:

Buckeye Power, Inc.
Columbus Southern Power Company (a unit of AEP)
Dayton Power & Light Company
Duke Energy Ohio
Ohio Power Company (a unit of AEP)
Ohio Valley Electric Corporation

(the "Utilities") suggest that Ohio EPA rescind Ohio's CAMR program under Ohio Adm.Code Chapter 3745-108.

Ohio EPA based its CAMR program on the federal CAMR program. On February 8, 2008, the D.C. Circuit Court of Appeals vacated the federal program. All appeals of the Court's decision have run their course and the Court's vacatur remains intact. Ohio's CAMR program cannot operate without the federal program. Accordingly, Ohio's CAMR program is obsolete and Ohio EPA should rescind it.

Ohio EPA's argument that it is retaining its CAMR program for possible incorporation into a future federal CAMR program does not justify keeping ineffective and non-operational rules on the books. Ohio EPA cannot predict when or if U.S. EPA will propose a replacement CAMR program. In fact, this is the second time Ohio EPA has proposed extending the compliance deadlines for its CAMR program because of the federal program's vacatur. Additionally, Ohio EPA will have to undertake at least one additional rulemaking to either extend the compliance deadlines again or rescind the rules if U.S. EPA does not promulgate a replacement program before 2013. Forcing interested parties, like the Utilities, to continually participate in a costly rulemaking process that may never result in a state CAMR program is unnecessary and wasteful.

Additionally, extending the CAMR deadlines, instead of rescinding the rule, uselessly prolongs the Utilities' current appeal of Ohio's CAMR program pending before ERAC. Continuing the appeal will pointlessly congest ERAC's already overburdened docket. Moreover, extending the appeal will force both parties to spend precious resources on a matter that could be resolved expeditiously by Agency action.

Furthermore, U.S. EPA's current focus is on developing maximum achievable control technology ("MACT") standards for mercury. These standards differ significantly from Ohio's current cap-and-trade CAMR program. As such, it is unlikely that Ohio will be able to incorporate its cap-and-trade program into a federal MACT program. In addition, under a federal MACT program, Ohio may not need to develop its own extensive state program. Instead, it could insert the federal MACT program as an applicable condition in the Ohio state implementation plan ("SIP").

Finally, rescinding Ohio's current CAMR program will not preclude Ohio EPA from proposing its promulgation in the future under a federal replacement program. Yet, leaving Ohio's CAMR program on the books is confusing to industry and the public. Therefore, Ohio EPA should rescind its CAMR program.

If Ohio EPA chooses not to rescind these unnecessary rules, then the Utilities agree with Ohio EPA's proposed rule to delay the compliance deadlines and recordkeeping and reporting requirements for mercury monitoring to January 1,

2013. The Utilities' comments in no way waive their objections to Ohio Adm.Code Chapter 3745-108, which they appealed to the Environmental Review Appeals Commission. The Utilities appreciate the opportunity to comment on the proposed language..

(Kate Tournoux, for the Ohio Utility Group)

Response 1:

In light of the recent action by US EPA concerning mercury emissions from coal-fired power plants*, Ohio EPA agrees with the commenter that it is no longer necessary to maintain Ohio's CAMR program as contained in Chapter 3745-108 of the Administrative Code and proposes that the entire Chapter be rescinded in preparation for the future federal rule making that will regulate mercury emissions from these facilities. In addition, it is now apparent that a federal cap and trade type program for mercury, that was cornerstone of Ohio's CAMR program, will not be utilized in this or any future rulemaking, making Chapter 3745-108 operationally non-functional, obsolete and unnecessary.

*The consent decree filed Oct. 22, 2009 in the U.S. District Court for the District of Columbia requires the agency to develop Clean Air Act section 112(d) maximum achievable control technology (MACT) emissions standards for hazardous air pollutants, including mercury, from coal and oil-fired electric steam generating units. The decree resolves a lawsuit, American Nurses Association, et al., v. EPA, filed by a coalition of activist groups to force issuance of the rules.

Under the terms of the agreement, EPA would by March 16, 2011, sign for publication in the Federal Register a notice of proposed rulemaking for its proposed MACT standards for power plants. The agency would then have until Nov. 16, 2011 to sign for publication in the Federal Register a notice of final rulemaking issuing the standards.

End of Response to Comments