



## Division of Air Pollution Control

### Response to Comments For Proposed Rule Language

**Rules: 3745-31-01, 3745-31-03, 3745-31-05, 3745-31-06, 3745-31-11, 3745-31-13, 3745-31-14 and 3745-31-33 "Permits-to-Install New Sources and Permit-to-Install and Operate Program"**

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

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Ohio EPA provided a 30 day comment period which ended on January 7, 2016 and a public hearing was also held on January 7, 2016. This document summarizes the comments and questions received at the public hearing and/or during the associated 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.

#### **3745-31-01, "Definitions"**

**Comment 1: The Procter & Gamble Company (P&G) appreciates the opportunity to comment on proposed changes to rule OAC Rules 3745-31-01. Specifically, P&G suggests some minor revisions to the definitions of "Emergency" at 3745-31-01 (MM) and the definition of "Emergency Engine" at 3745-31-01 (NN) to better align these definitions with those in the Federal Reciprocating Internal Combustion Engine (RICE) Rules at 40 CFR 63 Subpart ZZZZ, 40 CFR 60 Subpart IHI and 40 CFR 60 Subpart JJJJ.**

**P&G has been actively involved in assuring compliance with the Federal RICE rules and would like to ensure that the definitions found in OAC Rule 3745-31-01 are aligned with the Federal RICE Rules so that Ohio Regulations are better aligned with these Federal Rules. We propose these comments with that intent in mind.**

**These clarifications are important to P&G and we believe to other industrial users of fire pumps and emergency engines.**

**With this in mind, Attachment 1 includes P&G's suggested edits to the definitions of "Emergency" at 3745-31-01 (MM) and to the definition of "Emergency Engine" at 3745-31-01 (NN). This attachment also includes clarifying comments related to the suggested changes. Attachment 2 included the specific language from the Federal (RICE) Rules at 40 CFR 63 Subpart ZZZZ, 40 CFR 60 Subpart IIII and 40 CFR 60 Subpart JJJJ which relate to these definitions and the proposed changes, for reference.**

**In the definition of "Emergency", P&G proposes that the definition be revised to clarify that electrical power outages may be caused by things beyond failures which may interrupt power from the electrical grid, the local power supply equipment or the facility equipment that supplies power. For example, in cases where power is not supplied by the grid, power at a local facility may be interrupted when the normal local power generation equipment must be taken down for preventative maintenance of a system. These scenarios are important to be covered.**

**In the definition of "Emergency Engine", P&G proposes to add clarifying language, predominantly from the Federal rules to clarify what emergencies are. In addition and very importantly, OEPA provisions in (NN) (2) for the 100 hours of non-emergency use seem to exclude other non-emergency uses which are allowed under Federal Rules for up to 50 hours, as found in 40 CFR 63.6640 (f) (3) and in similar P&G Comments on Proposed Rule Revisions to OAC 3745-31-01, provisions in 40 CFR 60 Subpart IIII and JJJJ, but which are not included in Ohio's definition. The omission of the allowance for up to 50 hours of non-maintenance, non-emergency items other than those described in 3745-31-01 (NN) (2) (d) would limit these uses in Ohio. P&G believes that this was an oversight from OEPA's intent to simplify the definitions from the complex Federal Rules that have been amended a number of times. P&G specifically requests that these other non-emergency**

**uses be included in the Ohio Rules via language changes that would better harmonize the Ohio and Federal Rules and would not omit the provisions in the first sentence of 40 CFR 63.6640 (f) (3). (See reference in Attachment 2.) [Maxine Dewbury, The Procter & Gamble Company]**

**Response 1:** Thank you for your comment.

Ohio EPA concurs with your comment. Accordingly, we have revised 3745-31-01(MM) and (NN) to include the suggested language.

**3745-31-03, “Exemptions and permits-by-rule”**

**Comment 2:** In order to align with exemptions in other Region 5 states (Michigan R 336.1285 (i), Illinois Section 201.146 (y), Indiana 326 IAC 2-1.1-3(10(E)), and the purposes of Ohio's Common Sense Initiative, we urge that the proposed wording of OAC 3745-31-03(B)(1)(jj) be revised to state the following:

**(jj) Brazing, soldering, welding, or plasma cutting equipment. [Robert L. Brubaker, Porter Wright Morris & Arthur LLP]**

**Response 2:** Thank you for your comment.

Ohio EPA concurs with your comment. Accordingly, we have revised 3745-31-03(B)(1)(jj) to include the suggested language.

**Comment 3:** The Draft Rule proposes to revise the procedure and duration for both one-time approvals and pre-approvals necessary for the relocation of portable sources. The Draft Rule limits the validity of a one-time approval to within 180 days of the approval issuance and three years of issuance for a pre-approved site. The 180 day limitation for the one-time approval will cause a hardship for the construction aggregates industry. As you may know, the construction aggregates industry provides the material incorporated into asphalt, concrete, and base products used in all of the infrastructure projects throughout the state of Ohio. As

**such, the product mix, and the production schedules associated with making these products, are greatly influenced by seasonal weather conditions and customer demands. In light of this reality, the OAIMA is requesting that the duration for a one-time approval be extended to one year in order to accommodate the flexibility needed by the industry. No adverse environmental impact will result from this extension. [Patrick Jacomet, Executive Director, Ohio aggregates and Industrial Minerals Association “OAIMA”]**

**Response 3:** Thank you for your comment.

Ohio EPA concurs with your comment. Accordingly, we have revised 3745-31-03(B)(1)(p)(i)(e) and 3745-31-03(C)(2)(c)(iii)(a)(v) to accommodate the flexibility needed by the industry.

**Comment 4:** **The Draft Rule requires that within seven days of the relocation of the portable source the owner provide confirmation of the relocation to the Director. In the past, DAPC provided blank confirmation notices with the relocation approval letters, but no timeframe for reporting was stipulated. Again, given the seasonal nature of the industry and its need to adapt due to project changes and weather conditions, the seven day requirement is overly restrictive and may lead to unintentional violations of the rule due to vacation schedules and internal communication delays. While the OAIMA is not opposed to a deadline for confirmation of the relocated portable source, it proposes a forty-five day deadline for such reporting. [Patrick Jacomet, Executive Director, Ohio aggregates and Industrial Minerals Association “OAIMA”]**

**Response 4:** Thank you for your comment.

Ohio EPA understands your concern. We believe that these sources can move frequently, and that long of a delay would hamper our ability to sufficiently monitor ongoing compliance. For that reason, we think 21 days would be acceptable. Accordingly, we have revised OAC rule 3745-31-03(B)(1)(p)(i)(f), 3745-31-03(B)(1)(p)(ii)(f), 3745-31-03(C)(2)(c)(iii)(a)(vi) and 3745-31-03(C)(2)(c)(iii)(b)(vi) to reflect this change.

**Comment 5:** Regarding the proposed rule of the Ohio EPA that amends regulations under OAC 3745-31-01 through 33 (nonconsecutive) regarding the permit to install new sources and permit to install and operate program to update provisions and conform to federal standards. The proposal also sets forth exemptions, addresses emergency situations and emergency generators, and clarifies the difference between an exemption and a permit by rule (PBR). The PBR for emergency engines was changed to read as below. It still contains language to qualify that the engine must operate “no more than five hundred hours”, then goes on to state that “There is no time limit on the use ... in emergency situations...” Federal rules already limit non-emergency use to 100 hours. Is it OH EPA’s intent to allow use of emergency generators for >500 hours in response to power outages? [Heidi S. Anderson, Leidos Environmental Restoration Division]

**Response 5:** Thank you for your comment.

There is no time limit on the use of emergency engines to operate in response to emergencies defined in OAC rule 3745-31-01(MM). In this case, Ohio rules are equivalent to federal rules.

As you are aware, US EPA asked for and received a stay of the vacatur until May 1, 2016. So, the rules are currently unchanged due to the court decision. After the vacatur takes effect in May, then emergency engines will no longer be permitted to operate for the purposes specified in the paragraphs that were vacated [**40 CFR Parts 63.6640(f)(2)(ii)-(iii), 60.4211(f)(2)(ii)-(iii), and 60.4243(d)(2)(ii)-(iii)**], and engines that operate for the purposes specified in those paragraphs will be considered non-emergency engines and must comply with the regulatory requirements for non-emergency engines.

Since Ohio EPA is unaware of whether US EPA will resolve the vacated portions of the above listed federal rules prior to May 1, 2016, the general answer is that the facilities shall comply with both federal and Ohio rules. In case, there is a conflict between the federal and Ohio rules, then the facilities shall comply with the most stringent rule i.e. the emergency

engines shall not operate more than 100 hours per calendar year for non-emergency use in compliance with federal rules.

After May 1, 2016, based on what US EPA does with the vacated portions of the rule, Ohio EPA will amend permit-by-rule (PBR) for the emergency generators to match federal rules.

**End of Comments**