



## Division of Air Pollution Control Response to Comments

**Rule:** OAC Chapter 3745-107 - Draft Rulemaking Response to Comments

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

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Ohio EPA held a 30-day public comment period beginning March 25, 2020 regarding draft new rules in Ohio Administrative Code (OAC) Chapter 3745-107, "Power Plant Efficiency Rules." This document summarizes the comments and questions received during the associated comment period which ended on April 27, 2020.

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.

### **General/Overall Concerns**

**Comment 1:** The Affordable Clean Energy Rule, on its face, fails to achieve its stated purpose. Designed to replace the Clean Power Plan, a rule which would have significantly reduced the nation's greenhouse gas emissions by phasing out coal power and replacing it with natural gas, the Affordable Clean Energy Rule simply props up dirty coal plants and justifies continued burning of coal, an inefficient and environmentally disastrous fuel source. **(Miranda Leppla and Chris Tavenor, The Ohio Environmental Council)**

**Response 1:** The Ohio Environmental Council provided this and several similar comments regarding the merits of the Clean Power Plan and their dissatisfaction with its replacement, U.S. EPA's Affordable Clean Energy Rule (ACE Rule). The ACE Rule and accompanying withdrawal of the Clean Power Plan was proposed on August 31, 2018 by U.S. EPA. U.S. EPA accepted comments on the proposed rule through October 30, 2018, and the ACE Rule was finalized on June 19, 2019. As such, Ohio will be focusing solely on comments related to the State's proposed Power Plant Efficiency Rule and not the federal ACE rule.

**Comment 2:** Ohio's proposed Power Plant Efficiency Rule fails for the same reasons as its federal counterpart. Under Ohio EPA's own admission, its rules are

equivalent: “Ohio’s rules are based on the federal rules and have equivalent, but no more stringent requirements to the federal ACE rule.” If Ohio’s rules are no more stringent, then they similarly fail to meaningfully contribute to the emissions reductions necessary to combat the climate crisis. While the Ohio Environmental Council understands that the Ohio EPA must satisfy the requirements of the federal rule, the agency can and should go beyond the baseline to achieve additional emissions reductions. **(Miranda Leppla and Chris Tavenor, The Ohio Environmental Council)**

**Response 2:** As noted by the commenter, Ohio EPA must satisfy the requirements of the federal rule and that is the focus of Ohio’s proposal. At this time, Ohio EPA is not suggesting adoption of standards of performance that are more stringent than the federal rule. Ohio has achieved a drastic reduction in CO<sub>2</sub> emissions at Ohio’s coal-fired utilities. According to data from U.S. EPA’s Clean Air Markets Division (CAMD), Ohio’s coal-fired utilities have reduced CO<sub>2</sub> emissions by approximately 63% between 2005 and 2019. It is also useful to compare Ohio’s CO<sub>2</sub> emission reductions to the goals set forth in the withdrawn Clean Power Plan. The final plan, promulgated on October 23, 2015, would have required utilities in Ohio to achieve a final CO<sub>2</sub> emission rate of 73,769,806 tons by 2030. This goal was met and exceeded by Ohio’s coal-fired utilities in 2016. As of 2019, Ohio’s coal-fired fleet has reduced CO<sub>2</sub> emissions 23,186,525 tons below the final goal of the Clean Power Plan. Indeed, all Ohio EGUs of all fuel types met the Clean Power Plan’s 2030 goal as of 2019. Given these data, Ohio EPA contends that adopting standards of performance which exceed the federal rule is unnecessary at this time.

**Comment 3:** In addition to providing the “Standards of Performance” in Ohio’s state plan required under the federal rule, Ohio should provide more stringent requirements and specific targets for emissions reductions that coal-fired power plants must hit to achieve significant emissions reductions. If the power plants cannot meet those targets using HRI or other methods provided in the federal rule, Ohio should require the power plants to utilize other technology, such as natural gas co-firing. Coal plants must pay the true cost of their greenhouse emissions and be required to implement technology that causes meaningful reductions. **(Miranda Leppla and Chris Tavenor, The Ohio Environmental Council)**

**Response 3:** Ohio EPA fully intends to provide “Standards of Performance” in our state plan, as required by the federal rule, taking into consideration the vast differences in the operation, size, and physical characteristics observed across Ohio’s coal-fired fleet. As discussed in response 2, Ohio EPA does not believe that it is necessary to set more stringent standards of performance given the reductions already realized by Ohio’s coal-fired utilities. Lastly, consistent with the federal rule, Ohio EPA will allow a utility to use other methods to achieve the standards of performance in lieu of

directly implementing an Heat Rate Improvement (HRI) that may be used to develop the standards of performance (e.g., co-firing of natural gas).

**Comment 4:** Ohio has the authority—and duty to the health of Ohioans—to go beyond the federal rule. It can construct a State Plan that satisfies the federal requirements in the Affordable Clean Energy Rule while also pushing Ohio toward a cleaner and more renewable energy future. If Ohio fails to lead the charge in innovation for eliminating greenhouse gas emissions from coal plants, it will suffer in the long-term as other states transition more efficiently into a renewable energy economy.

The Affordable Clean Energy Rule makes clear to emphasize that states have the authority to go beyond the federal rule:

*Nothing in this subpart shall be construed to preclude any State or political subdivision thereof from adopting or enforcing:*

- (1) Standards of performance more stringent than emission guidelines specified in subpart C of this part or in applicable emission guidelines; or*
- (2) Compliance schedules requiring final compliance at earlier times than those specified in subpart C of this part.<sup>8</sup>*

**(Miranda Leppa and Chris Tavenor, The Ohio Environmental Council)**

**Response 4:** Ohio EPA understands that the federal rule indicates that States have the authority to exceed the requirements of the federal rule. However, as noted in response 2, Ohio EPA does not believe it is necessary to apply standards of performance more stringent than the federal rule considering the drastic reductions in CO<sub>2</sub> emissions already realized by Ohio's utilities. According to data from U.S. EPA's Clean Air Markets Division (CAMD), Ohio's coal-fired utilities have reduced CO<sub>2</sub> emissions by approximately 63% between 2005 and 2019.

The ability to determine the mix of generation of electricity lies with other authorities such as the Ohio Legislature and the Public Utilities Commission of Ohio.

**Comment 5:** Ohio must reduce greenhouse gas emissions in a way consistent with the best available science regarding the future impacts of climate change and with the legal requirement under the U.S. EPA's endangerment finding. Both the Affordable Clean Energy Rule, and the current version of Ohio's Power Plant Efficiency Rule, fail to accomplish either goal. If the Ohio EPA

goes no further than the federal minimum, it is failing to counteract the anthropogenic causes of climate change, harming present and future generations in the process. **(Miranda Leppla and Chris Tavenor, The Ohio Environmental Council)**

**Response 5:** As noted in response 2 above, Ohio EPA does not believe that it is necessary to set more stringent standards of performance given the reductions already realized by Ohio's coal-fired utilities. As of 2019, Ohio's coal-fired utilities have reduced CO<sub>2</sub> emissions from 2005 levels by approximately 63%. Based on Ohio's extensive stakeholder outreach, this trend is expected to continue into the future. Ohio EPA believes that the proposed Power Plant Efficiency Rule provides a workable framework for Ohio EPA and Ohio's widely varied coal-fired fleet to evaluate potential HRI projects and determine standards of performance consistent with the federal rule requirements.

**Comment 6:** OUG appreciates the efforts by Ohio EPA to develop a flexible approach to implementing US EPA's ACE rules. Because of the wide differences in operation and future plans of the units subject to the new rule, Ohio EPA has correctly avoided a "one size fits all" regulatory scheme. **(Michael E. Born, Shumaker, Loop & Kendrick, LLP on behalf of the Ohio Utilities and Generators Group (OUG))**

**Response 6:** Thank you for the comment. Ohio EPA recognizes and understands the varied nature of Ohio's coal fired fleet and the need to avoid a one-size-fits-all approach.

**Comment 7:** It is certainly a valid approach to require affected units to analyze potential heat rate improvements, proposed emissions standards and monitoring methods, and to require affected units to provide justifications of the approaches they utilized. However, EPA expects that the state plan submission will include the state's own independent analysis and justifications. In particular, EPA expects that the state will play a key role in ensuring consistency in the development of emissions standards, and that the state will exercise independent judgement in determining whether potential heat rate improvements are available to sources. **(Alexis Cain, U.S. EPA Region 5)**

**Response 7:** The rules in OAC Chapter 3745-107 are the framework for how affected units will provide the necessary data, analyses, and other relevant information to Ohio so that a State plan can be developed. Ohio EPA fully intends to review, analyze, and evaluate the proposed standards of performance at each affected unit as part of developing the State's plan. The affected utilities are the entities that have all of the data necessary to develop a plan.

3745-107-02 EGU-specific operational characteristics, heat rate study and standard of performance.

**Comment 8:** 3745-107-02(D)(1) states that affected units must explain whether their HRI analysis and proposed standard of performance took into account shutdown, startup and malfunction (SSM) events. This is an acceptable approach to framing the state's requirements for sources to conduct HRI analysis, but USEPA wishes to clarify that Ohio's rules must include numerical standards that apply at all times (including during SSM events). **(Alexis Cain, U.S. EPA Region 5)**

**Response 8:** Ohio EPA concurs that SSM events should be considered in proposing a standard of performance and evaluating HRIs and understands fully that the standards of performance must apply at all times, including SSM events. Ohio EPA wishes to clarify that the numerical standards themselves will be included in Ohio's state plan and not in the OAC Chapter 3745-107 rules. As identified in OAC rule 3745-107-03, Ohio EPA will incorporate the numerical standards in a permit, Director's order, or consent agreement. U.S EPA must recognize that the lowest level of emissions cannot be met during SSM events.

**Comment 9:** The draft rules request the submission of speculative data, such as future operating scenarios, anticipated market conditions, and estimated operational life of regulated units. While much of this information may be necessary for Ohio EPA to make decisions on the economics of any control approach as applied to a specific unit, most or all of the requests suggest a timeframe of events or circumstances stretching out to 2035. That is not a reasonable time period for the agency to use as a reference. Electric generation has changed dramatically over the last ten years and the industry's planning cycle has changed with it. Currently, most OUG members use a planning cycle of 3-5 years for business planning. Decisions on operations or capital investments are no longer made on a 10-15-20 year basis. Consequently, compliance options with ACE should not be either. OUG members will make their compliance decisions based on a 3-5 year window. Ohio EPA should revise its requests for future data and related estimates to a similar timeframe. Any attempts to make financial or regulatory decisions based on a longer calculation will be futile. **(Michael E. Born, Shumaker, Loop & Kendrick, LLP on behalf of the Ohio Utilities and Generators Group (OUG))**

**Response 9:** Thank you for your comment which we believe is in reference to OAC rule 3745-107-02. Ohio EPA is sensitive to the difficulties in projecting future operational and market conditions to 2035. However, the federal rule, 40 CFR 60.5740a(a)(4)(F)(iv), requires State plans to include projections of these and other factors to 2035. Ohio EPA believes the utilities themselves are in the best position based on their expertise and experience to provide such projections. Ohio EPA will work with the utilities on methods that can

use the information available to the utilities to develop realistic projections. While Ohio EPA is again sensitive to the burden this places on the owners and operators of affected units, this currently is a federal requirement that must be included in the state plan.

**Comment 10:** On a similar note, Ohio EPA makes references to “remaining useful life” as another temporal measurement. This is also a potentially inappropriate guide post. While some unit may already be slated for retirement, most OUG members are making such estimates on a far more contingent basis. Fuel prices, electricity demand, and market conditions are extremely fluid. The industry can not accurately predict “useful remaining life” today if market conditions change dramatically (or don’t) in 2-5 years. Further, the future operation of a unit could significantly change in a way that the unit might still generate electricity, but on a completely different cycle than anticipated now. The term “remaining useful life” should be avoided in favor of a properly caveated estimate solely for the purpose of the calculations of controls in this rule. **(Michael E. Born, Shumaker, Loop & Kendrick, LLP on behalf of the Ohio Utilities and Generators Group (OUG))**

**Response 10:** Ohio EPA recognizes the volatility of fuel prices, demand, and market conditions and the rapid changes electricity generating units have experienced in recent years. U.S. EPA has indicated on multiple occasions that if the remaining useful life of an affected unit is used to inform a standard of performance or HRI analyses at an affected unit, then the retirement date of that unit must be included in the State’s plan. Should market conditions change such that a unit’s planned retirement date needs to be adjusted or is no longer applicable, states will be able to revise their plan to account for such changes.

3745-107-03 Timelines and enforceability.

**Comment 11:** Section 3745-107-03 states that standards of performance and monitoring, recordkeeping and reporting requirements will be made enforceable in a permit under 3745-77 or 3745-31, director’s order, or Ohio Consent agreement. Regarding the use of permits under 3745-77 (Title V), we note that ACE requirements are not federal applicable requirements (and thus not federally enforceable) until they are approved by EPA into the ACE plan. Thus, we recommend that they be clearly identified in the state-only portion of the Title V permit unless and until they are approved by EPA. At that point they would become federal applicable requirements and the Title V permit would need to be revised to reflect this change in status (as well as to reflect any changes that may have occurred as a result of the EPA’s review and approval process). **(Alexis Cain, U.S. EPA Region 5)**

**Response 11:** Ohio EPA recognizes and understands the approach necessary to make the emission limits federally enforceable via the Title V permitting process. The process described in the comment is not the only available mechanism

to achieve federal enforceability. We also understand that the State plan is subject to the normal review and approval process by EPA and may be subject to change based upon that review.

**End of Response to Comments**