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Powering Strong Communities

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U.S. Environmental Protection Agency
Mail code: 2822T
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Submitted electronically via https://www.regulations.gov.

RE: Comments of the American Public Power Association on the Revisions to the Air Emissions Reporting Requirements, 88 Fed. Reg. 54,118 (August 9, 2023) Docket ID No. EPA–HQ–OAR–2004–0489.

Mr. Houyoux,

The American Public Power Association (APPA or the Association) is pleased to provide comments on the Environmental Protection Agency's (EPA or Agency) proposed rule titled "Revisions to the Air Emissions Reporting Requirements" (the Proposed Rule or Proposed AERR Revisions).[1] This Proposed Rule revises EPA's Air Emissions Reporting Requirements (AERR). APPA members own and operate power generation plants that would be directly and substantially affected by the Proposed AERR Revisions. The Association and its members have a strong interest in commenting on the Proposed Rule and further engaging with EPA on AERR.

APPA is a trade association composed of not-for-profit, community-owned utilities that provide electricity to 2,000 towns and cities nationwide. APPA protects the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

Public power entities are a unique subset of power generators with special cost sensitivities and human resource limitations. EPA should tailor this rulemaking in scope and continue utilizing other traditional means of collecting information. In the alternative, if EPA declines to narrow the Proposed Rule, APPA summarizes specific issues of concern raised by the Proposed Rule:

[1] 88 Fed. Reg. 54118 (Aug. 9, 2023).

- EPA should adopt de minimis HAP reporting thresholds;
- Mobile source data collection must be made feasible by clarifying the data needed and narrowing the data required;
- Stack test data should be omitted from reporting, but at the least, only existing testing data for compliance purposes should be required;
- Stack location coordinates should be eliminated from reporting requirements for security reasons;
- Reporting deadlines should be adjusted to provide more time to stagger other reporting obligations;
- Duplication in reporting should be considered and eliminated among AERR, other Clean Air Act, and environmental rules;
- Small generator reporting should be eliminated or, at a minimum, narrowed to only larger units;
- Costs to small entities must be meaningfully considered;
- Data quality concerns should be considered and addressed; and
- EPA should issue a supplemental notice for public comment about a proposed PFAS reporting program.

Thank you for considering these comments. The Association looks forward to working with the Agency concerning this rulemaking. Should you have any questions regarding these comments, please contact Ms. Carolyn Slaughter (202-467-2900) or cslaughter@publicpower.org.

Sincerely,

Carolyn Slaughter
Senior Director, Environmental Policy
American Public Power Association

Cc: Chet Wayland, EPA

COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION ON THE REVISIONS TO THE AIR EMISSIONS REPORTING REQUIREMENTS

88 Fed. Reg. 54118 (August 9, 2023)

Docket ID No. EPA–HQ–OAR–2004–0489

Submitted by:
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1. Introduction

The American Public Power Association (APPA or the Association) is pleased to provide comments on the Environmental Protection Agency's (EPA or Agency) proposed rule titled "Revisions to the Air Emissions Reporting Requirements" (the Proposed Rule or Proposed AERR Revisions).[1] This Proposed Rule revises EPA's Air Emissions Reporting Requirements (AERR). APPA members own and operate power generation plants that would be directly and substantially affected by the Proposed AERR Revisions. The Association and its members have a strong interest in commenting on the Proposed Rule and further engaging with EPA on AERR.

APPA is a trade association composed of not-for-profit, community-owned utilities that provide electricity to 2,000 towns and cities nationwide. APPA protects the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

APPA and our members have been, and continue to be, dedicated to clean air in our communities and protecting the environment. Our members have made significant investments to reduce emissions and become compliant with the suite of air regulations that EPA has promulgated over the last ten years. Many of our members actively report emissions as part of federal programs, such as the Greenhouse Gas Reporting Rule, the Mercury and Air Toxics Standards (MATS), and to their permitting authorities to comply with Clean Air Act (CAA) Title V air permits. As part of the highly regulated power sector, APPA members have a significant stake in the revisions proposed in this rulemaking, which seeks to add more reporting obligations. These requirements would significantly burden and financially impact public power utilities.

2. Executive Summary

The Proposed Rule would create history's most expansive air emissions collection effort. The collection effort touches virtually all industry sectors, all states, and tribal lands. It also encompasses a broad net of information that must be supplied to EPA. The Proposed AERR Revisions would add a new reporting focus on hazardous air pollutants (HAPs), although many other metrics must also be reported. Many insignificant sources that have *never* been subjected to reporting are captured, including de minimis air emissions sources and small facilities owned by our members.

EPA offers this ongoing and permanent collection effort against a backdrop of declining air emissions in all categories. Our nation's air quality has sustained dramatic improvements since 1990, according to an EPA clean air report based on recent emissions data.[2] Nationally, HAPs are also trending downward.[3] In fact, the recently proposed National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units

[1] 88 Fed. Reg. 54118 (Aug. 9, 2023).
[2] Our Nation's Air, June 2023, https://gispub.epa.gov/air/trendsreport/2023/documentation/AirTrends_Flyer.pdf
[3] https://gispub.epa.gov/air/trendsreport/2020/#air_toxics_trends

Review of the Residual Risk and Technology Review" (the Proposed MATS RTR Rule)[4] confirms that power plants are not posing unacceptable risks to the public. EPA affirmed that there are no unacceptable health risks or adverse environmental effects from HAPs posed by electric generating units (EGUs) based on EPA's own comprehensive exposure risk analysis.

Heedless of these positive developments, this sweeping Proposed Rule targets HAPs and other emissions. The Proposed AERR Revisions dig deep into the minutia of a source's operations. The disadvantages and costs of delving into this level of detail are cast aside in favor of EPA's approach to seize "all of the above" data from states and sources. The non-specific, hypothetical reasons for the data needs are inadequate – particularly considering the other tools that EPA has at its discretion. EPA should instead pursue data collection efforts tailored to the needs presented, such as the historically utilized Section 114 requests for enforcement and Information Collection Requests (ICRs), for rulemaking purposes. Never has EPA taken the tactic in this Proposed Rule to place what is essentially a blanket and "forever" information request on all industries. The Proposed Rule oversteps the Clean Air Act's bounds of reasonability.

APPA supports EPA's concerns regarding the protection of overburdened communities from unacceptable health or environmental effects. Yet this Proposed Rule would not provide benefits to communities. Its focus on trivial site activities would provide no advantage, nor would it arm EPA with data it seeks to redress environmental justice. The Clean Air Act has a robust infrastructure to ensure that ambient air is not degraded through NAAQS and air toxics provisions. The data elements sought must be complimentary to those programs.

The costs of this Proposed Rule should be considered as required by Clean Air Act Section 112, the section behind EPA's stated purpose for the majority of the revisions. With the ambitious suite of power sector environmental regulations proposed this year, our members are overburdened. The Proposed AERR Revisions at issue here "pile on." Public power entities as a sector require time and resources to pivot to EPA's environmental policy agenda. Entities with limited resources require time to triage environmental compliance costs. EPA must evaluate the cumulative costs of the overall regulatory context.

Public power entities are a unique subset of power generators with special cost sensitivities and human resource limitations. EPA should consider paring back this rulemaking in scope and continue utilizing other traditional means of collecting information. In the alternative, if EPA declines to narrow the Proposed Rule, APPA summarizes specific issues of concern raised by the Proposed Rule:

- EPA should adopt de minimis HAP reporting thresholds;
- Mobile source data collection must be made feasible by clarifying the data needed and narrowing the data required;
- Stack test data should be omitted from reporting, but at the least, only existing testing data for compliance purposes should be required;

[4] 88 Fed. Reg. 24,854 (Apr. 24, 2023).

- Stack location coordinates should be eliminated from reporting requirements for security reasons;
- Reporting deadlines should be adjusted to provide more time to stagger other reporting obligations;
- Duplication in reporting should be considered and eliminated among AERR, other Clean Air Act, and environmental rules;
- Small generator reporting should be eliminated or, at a minimum, narrowed to only larger units;
- Costs to small entities must be meaningfully considered;
- Data quality concerns should be considered and addressed; and
- EPA should issue a supplemental notice for public comment related to a proposed PFAS reporting program.

Thank you for your consideration of our detailed comments herein.

3. EPA Lacks Statutory Authorization to Force Expansive, Universal, and Continuing Data Collection Obligations

The Proposed Rule would create a deep and wide nationwide air data collection effort. The Clean Air Act contains no provision that authorizes the comprehensive efforts EPA proposes. In addition, the Proposed Rule fails to sufficiently explain the basis for this massive ongoing, definite, and substantial reporting effort for sources and states to undertake. Rather, EPA glosses over the statutory underpinnings and cites vague justifications regarding the need for the revisions.[5]

EPA identifies Clean Air Act Sections 114 and 301 as the primary statutory sections authorizing this broad reach. Section 114 of the Clean Air Act delineates specific purposes for which EPA can collect information. Section 114 identifies three instances in which EPA is authorized to collect data:

- Plan or regulation development: Development of an implementation plan under Section 7410 or 7411, emissions standards under Section 7412, or regulation of solid waste combustion under Section 7429;
- Enforcement: Determining whether any person that operates an emissions source is in violation of a standard or plan; or
- Catch-all: Carrying out any provision of this chapter.[6]

The statute then outlines specific information that EPA may require a person who owns or operates an emission source to provide. Congress pre-determined specific categories of information as appropriate, such as compliance records, audit procedures, emissions sampling, and control equipment parameters.[7] Subsection G authorizes EPA to require sources to provide

[5] 88 Fed. Reg. at 54,122.
[6] 42 U.S.C. § 7414(a) (Authority of Administrator or Authorized Representative).
[7] *Id.* at § 7414(a)(1).

"such other information as the Administrator may *reasonably* require."[8] This subsection of the statute confirms that a component of reasonability must be present. The court in *U.S. v. Xcel* acknowledged that Section 114 has reasonability guardrails.[9] Section 114 is not a blank check for EPA to seize information without boundaries.

EPA puts forward Section 301 of the CAA as further authorization for the Proposed Rule. That section authorizes EPA to prescribe regulations necessary to carry out its functions under the CAA. Section 301 is not without limitations. Courts recognize some nexus to existing sections of the CAA rather than interpreting Section 301 to bestow EPA with the authority to promulgate any matter relating to clean air in any manner that EPA sees fit.[10]

In either case, Sections 114 and 301 confer limited powers upon EPA. Taken together, an information request must be reasonable, and a new regulation must have a relationship to existing Clean Air Act provisions. Interpreting these provisions otherwise would allow EPA to essentially create its own air statutes, standing in Congress's shoes. Plainly, agency authority is not pervasive.

With respect to the Proposed Rule, EPA oversteps. First, EPA fails to identify how the collection effort that would be required is necessary. EPA's broad descriptions of necessity, such as "because such information is relevant to EPA's ability to carry out a wide variety of CAA provisions" is not enough.[11] Enforcement generalizations are also insufficient. EPA points to environmental justice considerations stemming from Executive Order 12898 to its justification, which have no basis in statute. EPA's authority to promulgate regulations is delegated from Congress,[12] irrespective of the executive office's directives. Second, the breadth of information to be reported, discussed in more detail in these comments, is beyond reasonable and is beyond the scope of existing CAA regulations. For example, de minimis quantities of HAPs and mobile source emissions – not otherwise reportable under the CAA – would need to be collected. These two new pieces of information would create a substantial burden for sources not to mention the data quality is precise. Further, EPA does not justify how this information is relevant or necessary. EPA itself concedes that the cost of the Proposed Rule will total $450.1 million in 2027 for owners and operators of emission sources. Additional costs will be incurred from 2024-2026 and for states, local, and tribal government authorities.[13] Although these costs are underestimated, even these numbers demonstrate how this rulemaking will significantly impact affected entities.

[8] *Id.* at § 7414(a)(1)(G).
[9] *U.S. v. Xcel Energy, Inc.*, 759 F.Supp.2d 1106 (D. Minn. 2010) ("EPA has valid statutory authority under the CAA to subpoena any documentation that it may "reasonably require" in determining whether a violation has occurred. 42 U.S.C. § 7414(a).").
[10] *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979) (finding that EPA has authority to adopt rules to harmonize existing Clean Air Act sections).
[11] 88 Fed. Reg. at 54122.
[12] *Arizona Public Service Co. v. EPA*, 562 F.2d 1116, 1123 (10th Cir. 2009).
[13] 88 Fed. Reg. at 54194.

APPA requests that EPA revise its proposal by tailoring it to the programs in the Clean Air Act. New information should only gap-fill information EPA lacks. EPA must narrow its proposed AERR revision to fall within EPA's statutory authorization.

4. The Proposed Rule is Overly Broad and Burdensome on Small Entities

4.1 All HAPs must be reported – regardless of quantity.

The lack of a *de minimis* threshold for reporting HAPs is problematic. The Proposed Rule requires that point sources report all HAPs. It says: "For major point sources, reporting HAP must include all HAP listed in section 112(b)(1) of the Clean Air Act, 42 U.S.C. 7412(b)(1), and 40 CFR 63.64(a)."[14] The lack of a de minimis threshold would lead to substantial new tracking and collection of de minimis HAPs for little benefit to the dataset.

Power plant air permits may require estimates of one or several HAPs based on throughput or fuel usage and/or by applying AP-42 emission factors. Sometimes permits require reporting of a total HAP number, without speciation. In less common circumstances, direct testing of an individual HAP of concern may be required due to a larger potential to emit. Consequently, a plant may have HAP point source emissions data for a single or small number of HAPs but certainly not for the entire complement of 188 HAPs in Section 112(b). Notably, calculated emissions are only estimates and should be handled separately in a dataset from actual HAP emissions or allow for continuous emissions monitoring system (CEMS) for HAPS and or other monitoring methods for actual emissions.

In addition to the emissions from a point source at a power plant, electricity generation requires materials and products containing HAPs to be delivered, stored, and used on-site for operational purposes. Plants track these chemicals in their toxic release inventories (TRI), Emergency Planning and Community Right-to-Know Act (EPCRA) reporting, and safety data sheets (SDSs) retained on-site. For instance, in the power sector, there are many facilities that have chlorine on site for water treatment. The Proposed Rule does not specify whether "all HAP" would include estimates of chemicals stored on-site, would be based on emissions only from the stack, would include all ambient emissions, including fugitives, or would include a combination of these categories.

Even if the Proposed Rule *only required reporting of HAP stack and fugitive emissions*, sources would be required to perform a full facility audit to attempt to identify and quantify low-level HAPs that are not currently measured or reportable. If any trace HAPs are identified, the source must devise a method to track, measure, and collect the emissions data. This HAP-finding expedition would be even more onerous if applied to delivered and stored chemicals.

[14] Proposed 40 CFR § 51.12(b) (Hazardous Air Pollutants). For non-major sources, reported HAP is required if the annual actual emissions of that pollutant or pollutant group is greater than or equal to the HAP reporting threshold in proposed Table 1B. To comply, these non-major sources must track all HAPs in Table 1B to determine if thresholds are met. Proposed 40 CFR § 51.5(b)(2).

Requiring reporting of "all HAP" raises data accuracy concerns. HAP data would come from mixed sources with various levels of accuracy. Sources may report HAP data using calculations required for permit compliance, which may differ from the methodology for AERR compliance. EPA comments that emission estimation tools would be created and supplied to small entities for their use.[15] However, it would be nearly impossible for EPA's forthcoming emissions estimation tools to mirror HAP calculation methods found within Title V and state air permits nationwide. As a result, EPA's estimating tool is likely to provide different estimates for the same HAP emissions as compared to the methodology used for state and Title V permit compliance. It would be nearly impossible to standardize HAP reporting methodology across separate databases.

In addition, as previously stated, data based on estimates must be distinguished from actual emissions data. Conservative estimates of HAPs based on AP-42 should never be used as if they are actual emissions. The Proposed Rule is silent regarding how potential database methodology conflicts and data source inconsistencies would be handled.

Quality assurance of HAP data is another area where state and federal databases may diverge. Many states collect emissions inventory data for the purposes of calculating permit fees. These data typically undergo several rounds of quality assurance by state regulators through database review and review by the inspector most familiar with the facility. Presumably, EPA's database of HAP data would not have the benefit of quality assurance and certainly no local review. The result would be two databases that are unlikely to contain consistent HAP data due to differences in quality assurance and rounding of HAP data. EPA should consider addressing and clarifying quality control inconsistencies.

APPA asks EPA to re-evaluate the reporting requirement for HAPs. "All HAP" should be revised and narrowed to *exclude* the following from reporting: (1) Small sources of point source and fugitive HAPs; (2) Stored products and chemicals that contain HAPs; (3) HAPs from permitted insignificant activities; and (4) HAPs for which there is not already testing data (not already collected under a federal, state, or permitting program). EPA should also ensure that actual HAP test data is separately reported from emissions projections and address calculating inconsistencies between state and EPA databases. Facilities should not be required to revise existing HAP data testing, monitoring, and reporting infrastructure already in place.

4.1.1 *Additional data field reporting for point sources*

EPA proposes to add additional required data fields for point source reporting, affecting both state and owners and operators.[16] EPA proposed to require the identification of all federally enforceable regulations that would apply to each unit at certain facilities, the Title V permit numbers, the summed activity level for fuel use from combustion sources at each facility, and the requirement to specify control devices and their ability to control emissions.[17] The task of identifying federal regulatory requirements for certain facilities will be time-consuming. To properly accomplish this task, an engineer familiar with the facility's operations and the Title V

[15] 88 Fed. Reg. at 54,145-46.
[16] 88 Fed. Reg. at 54,124.
[17] *Id*.

permit would be needed because some facilities would need new codes for many areas of regulatory applicability, creating a complex exercise for a state with hundreds of facilities. Current state electronic databases would require upgrades to sustain the additional codes that EPA proposes. EPA should factor in the labor and time required to add these data fields.

APPA has concerns that these additional requirements are too onerous, and EPA needs to explain the data needs better. First, EPA should clarify its requirement that facilities report which federally enforceable regulations apply only pertains to federally enforceable regulations under the Clean Air Act. State regulators are better positioned to identify all the federally enforceable regulations that would apply to a certain facility. Owners/operators may not know or know which state requirements they comply with are considered federally enforceable requirements. This may especially be true of small entities unfamiliar with the environmental report programs.

4.2 Mobile source data reporting is onerous for stationary sources.

The Proposed Rule requires stationary sources to report emissions from mobile sources that operate on the boundaries of the facility site to assess whether mobile sources exceed the reporting thresholds in Table 1A and 1B.[18] Power generation plants do not have routine reporting requirements for mobile sources. These data are not at hand. Mobile source emissions gathering would require substantial new efforts to meet the scope defined by the Proposed Rule.

Mobile sources are defined very broadly as "a motor vehicle, nonroad engine or nonroad vehicle."[19] The Proposed Rule provides no de minimis exclusion nor is there an exclusion for third party vehicles. In the preamble, EPA discusses a narrower definition of "mobile source" to be considered in source data. As to mobile source emissions, EPA states that it would: "[D]efine which mobile sources should be included [in source calculations] to distinguish the mobile sources that are part of the functioning of the facility (which would be included) from vehicles like cargo trains, employees' personal vehicles, or delivery trucks (which would not be included)."[20] The proposed regulatory language does not provide this direct guidance. Although this delineation is slightly more workable, at power plants, many third-party vehicles come onto plant property that arguably assist in the function of the power plant. Utilities would be placed in an untenable position to sort out what to report and what not to report. Power plants have regularly scheduled outages to perform maintenance work and capital improvements. During an outage, a power plant becomes a flurry of third-party activity -- vehicles performing plant construction work (dump trucks, bulldozers) and heavy portable equipment (rented generators) to accomplish outage projects. These mobile sources are transient and not reflective of normal operations. Not only would mobile source emissions for third party outage traffic and equipment be difficult to track, but the value of the data would be negligible.

The framework of the Clean Air Act does not support data collection efforts that combine stationary source and mobile source data. EPA's stated authorities for amending AERR are Sections 110, 114, 172, 182, 187, 189, and 301(a).[21] Mobile sources are regulated under the

[18] Proposed 40 CFR § 51.5(b)(1).
[19] Proposed 40 CFR § 51.50.
[20] 88 Fed. Reg. at 54,175.
[21] 88 Fed. Reg. at 54122.

motor vehicle emission and fuel standards in Title II of the Clean Air Act (Sections 202-250). The Clean Air Act is plainly designed to separate the regulation of stationary sources and mobile sources. It frames discrete statutory regimes for these source types that have distinct characteristics. A cumulative collection effort is inconsistent with Congress's intent. Double counting of mobile source emissions may also result, where mobile source emissions are already covered by vehicle emission standards.

Reporting mobile source data from mobile sources on-site owned by the stationary source is also burdensome. This new category of data would be difficult to report accurately and reliably. When permitting a source or project, applicants do not even go to this level of detail. Often permit application fugitive emissions constitute estimates of haul truck traffic for fuel deliveries. Although those estimates are reliable, they are not actual emissions data. Substantial effort would be required to count truck traffic and record the operation of the myriad of insignificant activities that take place at a power plant daily. These activities produce minimal emissions. The burden of the overwhelming effort to capture mobile source emissions does not justify the minimal benefit these data would provide EPA. Further, these mobile source emissions are already estimated by states and included in the state implementation plans (SIP) and include activities at point sources. Any attempt to include mobile source emissions as a point source would result in double-counting.

Finally, EPA also must consider whether mobile source data can even be accurately collected. Since mobile source emissions cannot be collected via an automated system such as CEMS, the collection process would be labor-intensive and limited by the subjectivity of the operator recording the data. EPA should consider whether variability in data among data collectors, plants, and owners/operators further erodes the efficacy of this exercise. The Proposed Rule does not provide guidance as to how emissions from these sources would be calculated, e.g., using the potential to emit (8760 hours) or actual emissions based on operational estimates.

APPA advocates for EPA to remove mobile source emissions from this Proposed Rule. The inclusion of mobile sources is rife with problems stemming from (1) the transient third-party vehicles and equipment on-site, (2) the labor-intensive nature of collecting these data, (3) the accuracy of the exercise, and (4) the lack of the ultimate benefit of these data to EPA's functions.

4.3 <u>The broad request for source testing data is duplicative, unjustified, and unnecessary.</u>

EPA proposes to require owners/operators of facilities to report the results of stack tests and performance evaluations electronically in the Compliance and Emissions Data Reporting Interface (CEDRI) when otherwise not reported to EPA.[22] Typically, sources report stack test data to their permitting authority to demonstrate compliance with permits. These reporting requirements are tailored to show that the source meets the emissions limitations defined in the permit. In some circumstances, sources may conduct stack tests for other reasons, whether for their own business-related purposes – such as experimenting with a new control device or new fuel mix or for monitoring purposes. Non-compliance purposes are often not indicative of normal operations. In addition, other stack tests may not employ testing specifications consistent with an

[22] 88 Fed. Reg. at 54,125.

approved or alternate EPA method. This data would degrade the dataset and cause data quality concerns.

Power generators often perform stack tests for continuous emissions monitor (CEMS) certifications. These stack tests are performed under fixed load and controlled conditions. Some facilities that stack test annually or every two years may use the average of the most recent three stack tests as their emission factor if the source is operated relatively consistently and there were no modifications or changes in the method of operation of the source across the three stack tests. One stack test is a snapshot in time, and an average of the most recent three stack tests might better represent annual average emissions. In this case, facilities using this more representative approach would be required to submit justification for doing so, an extra burden.
At a minimum, EPA should require facilities to submit only the results of stack tests that represent sustained normal operation. If this is the case, facilities would be less likely to need to justify the use of other data to report annual emissions.

The Proposed Rule does not identify any limit to the stack test data to be reported to EPA, which creates confusion. Even if only the stack tests required by permits are to be reported to EPA, these data would be substantial. It is also unclear why it is necessary for sources to double-report stack test data that is already being reported to the permitting authority. When EPA delegates permitting authority, that delegated entity is responsible for ensuring compliance with emissions limits in the permit. In addition, data requirements should be forward-looking only. Sources should not be required to compile and upload old stack tests. Such an exercise would be labor intensive and would unduly burden smaller sources.

In summary, EPA should not require stack test data to be reported under AERR. Valid stack tests for compliance purposes with a permit limit are valuable data; however, these data are currently reported to states and other permitting authorities. EPA expresses a need to have these data to develop emissions factors. Other processes exist for EPA to collect data that do not constitute an ongoing and significant burden on the public. Further, non-representative stack test data is not reliable for emission factor development. EPA has failed to justify this proposed new requirement to submit all stack test data. APPA asks EPA to consider removing this requirement from the final rule.

4.4 <u>The requirement to use best available emission estimation method should be clarified</u>

EPA expresses a desire to obtain high quality emissions data. However, the current AERR is silent on how emissions should be calculated. EPA is proposing to add a requirement that states and owners/ operators of facilities use the best available methods to report annual actual emissions.[23] "Where the current EPA guidance material are outdated or are not applicable to a source or source category an owner/operators (other than a small entity) should develop and document new techniques for estimating emissions, which should rely on any available source measurements appliable to the emission source(s)."[24] This additional requirement to develop and

[23] 88 Fed. Reg. at 54,169.
[24] 88 Fed. Reg. at 54,201.

document new techniques for estimating emissions is overly burdensome.[25] Many of the published emission factors by EPA were developed in the 1990s or early 2000s. If these early developed emissions factors are determined to be outdated, industry would have the burden of conducting more new costly stack testing. Emissions testing, in general, is disruptive and expensive, especially when attempting to estimate emissions of "all HAPs" at a given facility. EPA should revise the regulatory language under §51.5(a) to explicitly exclude all facilities from a requirement to conduct new source testing to account for "all HAP" emissions from affected facilities.

4.5 Malfunction option

EPA is soliciting comments on an additional "Malfunction Option" requirement, where states and owners/operators report malfunction emissions as a separate value from other emissions. Requiring facilities to calculate and report emissions associated with malfunctions would unnecessarily add complexity to a proposal that is already expansive and burdensome. If this option is included, approximate dates of occurrence, the approximate number of days of the occurrence (if more than one day), and the estimated emissions associated with each malfunction would be included.[26] Determining what is a reportable malfunction event can be difficult to calculate, as EPA states. For example, malfunction events already captured by a facility's CEMS and included in actual emissions should not be required to be reported additionally under the malfunction code. This creates a concern the emissions from the malfunction were double counted. Reducing actual emissions by an amount deemed as malfunction emissions and reported separately, to prevent double counting, would then result in a mismatch of reported total emissions amongst other EPA or state reporting programs. It could be difficult to classify a malfunction vs. an operational variance. Electric generating units (EGUs) can have numerous operation variances that can be interpreted erroneously as malfunctioning. For example, a boiler's drift in oxygen feed can cause increased carbon monoxide emissions. Whether instantaneous or gradual, this scenario may not affect any imposed emission limits. Factors such as load ramping may require adjustment to boiler oxygen (O_2) feed, which can be a necessary operation to satisfy other boiler parameters.

In addition, emissions that are not monitored by CEMS would be difficult to quantify or capture during a malfunction event. For example, metals from coal combustion are based on emission factors from AP-42 or site-specific stack tests. There is no way to capture emissions due to a malfunction event by way of a numerical factor using a standard (throughput * emission factor) equation. APPA recommends not finalizing the "malfunction option" as proposed.

[25] The Small Business Advocacy Review Panel (SBAR Panel) recognized the burden associated with calculating emissions estimates, and the Panel recommended that EPA develop an emissions estimation tool and provide any necessary updates to this tool. SBAR Panel, Executive Summary at 5, https://downloads.regulations.gov/EPA-HQ-OAR-2004-0489-0096/attachment_1.pdf

[26] 88 Fed. Reg. at 54,190.

5. The Proposed Rule's Broad Reach Would Be Costly and Burdensome on Small Entities

5.1 EPA should further consider ways to minimize the substantial financial impacts to smaller entities

EPA convened a Small Business Advocacy Review Panel (SBAR Panel) to evaluate the impacts of the Proposed Rule on small entities. The SBAR Panel provided valuable feedback that EPA underestimated the burden of the Proposed Rule on small businesses by failing to consider the need to hire contractors. APPA anticipates that many of its members would need to hire contractors to carry the workload these revisions would require.[27] We also concur with any measures that EPA could develop to ease the workload on small entities, such as developing emissions reporting tools, conducting training, and new approaches to HAP estimation. Based on our outreach to states, APPA believes that Small Business Environmental Assistance Programs (SBEAP) would be overwhelmed by the number of affected facilities seeking assistance as a result of this rulemaking. Training and outreach efforts would likely require additional full-time SBEAP staff to support these efforts. As a result, small entities must rely on private contractors to develop and provide these tools, further increasing the financial burden on these entities. Of course, narrowing the scope of these revisions to only the essential data needs would be the most productive approach to defray the cost and burden of this rulemaking.

5.2 Small entities would have an increased workload to comply

Smaller utilities are not staffed to collect the data required by the Proposed Rule. Public power and municipalities have either no dedicated environmental staff or a minimal number of personnel. Many of our members rely on outside consultants, especially given that many are unfamiliar with software – such as Compliance and Emissions Data Reporting Interface (CEDRI) -- to assist in collecting data and processing it using reporting software to meet environmental compliance requirements. Based on experience with other reporting obligations, such as TRI, our members would need to develop a proposal for a third party to coordinate, gather, and capture emissions. An appropriate estimate for the broad scope of information gathering is at least $100,000 initially and $40,000 annually per plant without in-house plant support. The effort would require a consultant project manager, project engineer, software changes, data management services, and reporting. Legal oversight would initially be needed to launch the program at an additional expense. EPA must factor these costs into its analysis to minimize the burdens on small entities. APPA member Kansas City Board of Public Utilities (KBPU) has seen its air emissions inventory (AEI) reporting costs increase since 2018 from $5,560 to $7,459 in 2023, which is in stark contrast to costs EPA projects per facility. EPA states that owners/operators' cost is $2,000 per year per facility from 2024-2026 and $3,000 in 2027.

6. Reporting Stack Location Data May Lead to Security and Reliability Concerns

In 2023, the North American Electric Reliability Corporation (NERC) reported an uptick in physical security incidents to the grid. Measurable grid outages increased 71 percent as of the

[27] SBAR Panel, Executive Summary at EPA-HQ-OAR-2004-0489-0096_attachment_1.pdf (SBAR Executive Summary) at 5.

end of 2022 as compared to 2021 and 20 percent since 2020.[28] The grid has sustained high-profile physical attacks on substations and transformers.[29] Intentional physical attacks are a threat, particularly as tensions rise internationally in China and Russia.[30] APPA and its members have recognized this risk. They actively engage in measures to reduce threats to the grid from physical and cyber-attacks through training and sector-wide preparation exercises.[31]

Protecting the confidentiality of information is the first line of defense against a coordinated and intentional physical attack. Hence, it is concerning that the Proposed Rule would require reporting of stack and fugitive release points. This information was previously only voluntarily reported.[32]

Other federal laws protect critical grid infrastructure. The Department of Energy (DOE) protects energy security. DOE has promulgated regulations to protect the release of information under the Freedom of Information Act (FOIA). Those regulations specifically protect information defined as "critical electric infrastructure information" (CEII).[33] CEII includes information generated by FERC.[34] The regulations provide an entire process for protecting this information, which includes a FOIA exclusion. If the Proposed Rule does not provide a means to protect infrastructure information (release point locations), then AERR would contradict DOE confidentiality protections. APPA asks EPA to review DOE regulations and adopt consistent confidentiality provisions in the AERR Revisions.

EPA claims to require location information to "correctly model and estimate risk associated with HAP."[35] EPA explains that the data would assist in future Section 112 risk reviews and technology reviews as opposed to having to engage in a "never-ended stream of individual data collection requests."[36] Instead, EPA proposes that sources partake in a never-ending obligation to report stack coordinates, resulting in substantially more work than a government effort every eight years. Aside from adding another obligation on sources, these data will be more accessible to ill-intentioned actors with designs on grid failure. EPA must recognize that physical grid threats are on the rise. Location information should be protected.

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[28] *See* https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/experts-eye-ways-to-mitigate-physical-assaults-on-us-power-grid-76888917; *see also* https://www.cbsnews.com/news/physical-attacks-on-power-grid-rose-by-71-last-year-compared-to-2021/

[29] Those include high-profile attacks on substations in North Carolina, which left 45,000 customers without power, as well as attacks in Washington state and California. In February, federal prosecutors filed charges against two Maryland individuals for conspiracy to destroy a substation in Baltimore.

[30] *See* https://www.utilitydive.com/news/physical-attacks-on-north-american-power-grid-rose-more-than-10-last-year/646986/

[31] https://www.publicpower.org/policy/grid-security

[32] 88 Fed. Reg. at 54,124. The current AERR requires a single facility-wide location.

[33] 10 CFR § 1004.13(c)(3) ("***Critical Electric Infrastructure*** means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.").

[34] 10 CFR § 1004.13. FERC even provides for sanctions for knowing and willful disclosure of critical infrastructure information. 18 CFR § 388.113(h).

[35] *Id.*

[36] *Id.* at 54,143.

EPA should remove this requirement from the Proposed Rule because EPA has other means to request this information using a targeted industry sector request when it is needed.

7. Reporting Deadlines are Burdensome and Unrealistic

The Proposed Rule imposes a heavy reporting lift. Other environmental reporting regulations and permitting requirements already capture information that would become subject to AERR.[37] On-site stored HAPs are reported in EPCRA Tier II reports, TRI reports, biennial hazardous waste reporting, and for the Toxic Substances Control Act (TSCA). HAP emissions for air permit compliance are reported annually in Title V compliance certifications. The MATS Rule also requires reporting of HAPs or HAP surrogates. MATS already covers the most significant HAPs emitted by the power sector.

Adding new AERR requirements to other reporting programs is unjustified and adds extra burdens on small entities. We do not anticipate that states will step in to help sources due to their own stretched resources. Therefore, our members will face new obligations that will likely need to be farmed out to third-party consultant resources.

Public power and municipalities may be disproportionately affected if the work and deadlines imposed by the Proposed Rule cannot be met by the current consulting workforce. EPA proposes the following tight mandatory reporting deadlines:

- Report 2026 Actual Emissions by May 31, 2027;
- Report 2027 and beyond Actual Emissions by March 31 of the following year (e.g., March 31, 2028)[38]

Consultants that help our members with reporting will be triaging reporting for Title V permits, greenhouse gases, quarterly compliance reports, Tier II reports, and biennial hazardous waste reporting, all due in the first part of a given year. AERR would be added to this list.

A three-month reporting deadline from the end of a reporting year to the reporting deadline is unworkable. Compiling the broad scope of AERR emissions in only three months is daunting and infeasible when layered atop other reporting obligations. APPA requests that the EPA modify the proposed AERR reporting deadline by providing a longer window between the end of the reporting year and the reporting deadline. EPA may consider aligning the AERR deadline with the July TRI deadlines to provide adequate time to compile, calculate, and quality-assure data. This leeway may also help with any consultant workforce shortages so that work could be spread over a more extended period of time.

The Proposed Rule identifies performance test deadlines (after the effective date) as "the earliest scheduled reporting date for any form of reporting (electronic or otherwise) as required by the Federal or State action motivating the measurements" or, if no deadline exists, 60 days

[37] Admittedly, uncertainty regarding the scope of information to be reported makes it difficult to identify overlapping regulations. For the purposes of these comments, APPA assumes that "all HAP" includes HAPs stored on-site.

[38] Proposed 40 CFR § 51.30(c)-(d).

from completing the measurements.[39] The stack test deadline is unclear and should be revised. A specific reporting deadline would be advantageous, but a 60-day deadline *from completing measurements* is too short. Often, sources do not receive stack test results and reports from the stack testing consultant until close to 60 days. Frequently, methodology and reports must be analyzed for errors. EPA should allow time for quality assurance by the source. Otherwise, invalid results would have to be reported and later revised, creating confusion and inaccuracies in the data set.

APPA requests EPA's consideration of the myriad of duplicative requirements that public power and municipalities face. Requirements should be streamlined, where possible, by eliminating duplication and allowing for more timing flexibility.

8. Reporting Small Generator Unit Data Outweighs the Benefit of Capturing this Dataset.

The Proposed Rule seeks to capture emissions data from the smallest size generating unit (less than 25 MW).[40] These units are essential behind the meter generators or backup generators (BUGs) that run on high electricity demand days. They play a key role for reliability purposes. APPA members or their cities own reciprocating internal combustion engines (RICE), small combustion turbines (CTs), and or small natural gas steam generators, which are used to provide additional internal system support.

The Proposed Rule assigns owners and operators of these sources the labor-intensive task of recording, daily, the fuel used and heat input. No, de minimis threshold is proposed as to either the size of the unit subject to reporting or the usage data to be recorded or the total HAP emissions from the unit.

Reporting these emissions outweigh the benefits. EPA claims an essential need for small generating unit data based on the hypothetical possibility that "[t]hese sources may contribute significantly to tropospheric ozone on high-temperature days in some areas, leading to public health concerns."[41] Given the size and limited use of smaller generating units, this assertion is unlikely. Ambient monitors confirm areas with ozone NAAQS attainment concerns, which provide much more valuable data to address ozone formation, determine region-specific causes, and reduce health impacts. For nonattainment areas, EPA and states have other tools to address NAAQS, such as federally-enforceable NAAQS attainment demonstration and maintenance plans.[42] The Proposed Rule's provisions to collect small generating unit data is ineffective for EPA's stated purpose.

APPA urges EPA not to include emissions or fuel usage or heat input from these small generators in a final rule. However, if the agency pursues collecting these data, it should, at a

[39] *Id.* at § 51.30(e)(1)-(2).
[40] 88 Fed. Reg. at 54153.
[41] *Id.*
[42] Plans are developed as part of the NAAQS implementation phase under Clean Air Act, Section 110.

minimum, narrow the definition of "small generating unit" to alleviate implementation burdens. Proposed Section 51.50 defines a small generating unit as:

> *Small generating unit* means any boiler, turbine, internal combustion engine or other unit that combusts fuel on an occasional basis to generate electricity for the electricity grid or for on-site use by a facility other than for emergency use.

This definition provides no size boundary or range. Even a small-sized household generator would be captured. This wording is a broad catch-all that could encompass almost any generator – whether intended as backup power in a planned outage or to power an employee barbeque. Plainly, the regulatory language should be narrowed to reduce the burden of data collection.

9. The Proposed Rule's Approach Would Sacrifice Data Quality

AERR is not the appropriate mechanism to broadly address theoretical information needs. The data proposed to be captured are varied and could easily be taken out of context if used in a one-size-fits-all dataset for enforcement, rulemakings, and environmental justice considerations. Throughout these comments, we have identified data quality issues and variability in HAP emissions data types. HAPs data comes from a variety of sources, many of which are estimates and not direct measurements: AP-42, fuel usage calculations, and surrogate data. EGUs rarely test for individual HAPs.

EPA should consider a more appropriate and tailored approach for its data needs. Seeking data for specific purposes using the ICR process has been EPA's historical approach. ICRs have been regularly employed in the eight-year technology review and in one-time residual risk evaluation processes. In the ICR data collection process, EPA identifies the purpose of the data need, which helps sources to provide the data appropriate for the task at hand. APPA implores EPA to take a more measured approach. EPA should seek the data it needs on a case-by-case basis, using data already available and supplementing with ICR requests. The result will be a better-quality data set with less burden on sources and states.

10. The Option to Include PFAS as a Required Pollutant Needs to be Clarified

The Proposed Rule states EPA is considering whether to include reporting of per and poly-fluoroalkyl substances (PFAS).[43] EPA acknowledges that PFAS is not a HAP and suggests that there is a need to identify better and characterize PFAS point source air emissions. EPA also notes that, "measurement methods are unavailable to measure many of the individual compounds [that] makeup that collectively group PFAS compounds" and that the "toxicity data are available for only a handful of compounds" and explains that "[t]hese limitations would need to be accommodated by any regulations concerning the reporting of PFAS."[44]

Based on the limited discussion in the preamble, it is unclear if EPA is seeking preliminary comments and ideas on how to design and implement PFAS reporting as part of a future rulemaking or whether the Agency is proposing to require PFAS reporting. Further, there

[43] 88 Fed. Reg. at 54148.
[44] Id.

is no accompanying regulatory text outlining the specific PFAS reporting requirements, given the limitations in measurement methods, toxicity data, and risk analysis that EPA acknowledges. APPA recommends that EPA issue a supplemental notice for public comment to clarify its position and provide details of a proposed PFAS reporting program.

11. Conclusion

Thank you for your consideration of these comments. The Association looks forward to working with the Agency concerning this rulemaking. Should you have any questions regarding these comments, please contact Ms. Carolyn Slaughter (202-467-2900) or cslaughter@publicpower.org.