PGEN COMMENTS ON EPA'S PROPOSED RULE: REVISIONS TO THE AIR EMISSIONS REPORTING REQUIREMENTS

Docket ID No. EPA-HQ-OAR-2004-0489

I. Introduction

The Power Generators Air Coalition ("PGen") appreciates the opportunity to submit these comments on the U.S. Environmental Protection Agency's ("EPA" or the "Agency") proposed rule entitled "Revisions to the Air Emissions Reporting Requirements. 88 Fed. Reg. 54,118 (Aug. 9, 2023)" ("Proposed Rule" or "Proposal"). The Proposed Rule would impose significant new reporting requirements. Among, other things, the Proposed Rule would amend the Air Emissions Reporting Requirements ("AERR") to require owners and operators of facilities to report additional emissions data, including data on emissions of hazardous air pollutants ("HAP"). *Id*. The Proposed Rule also includes a new optional approach for the collection HAP data by air agencies who would be authorized to implement the AERR's proposed new requirements on behalf of owners and operators. *Id*. The Proposed Rule would also "make reporting requirements for point sources consistent for every year; phase in earlier deadlines for point source reporting; and add requirements for reporting fuel use data for certain sources of electrical generation associated with peak electricity demand." *Id*.

PGen is an incorporated nonprofit 501(c)(6) organization whose members are diverse electric generating companies—public power, rural electric cooperatives, and investor-owned utilities—with a mix of solar, wind, hydroelectric, nuclear, and fossil generation. PGen is a collaborative effort of electric generators to share information and expertise in the interest of constructively evaluating and effectively managing air emissions to meet and exceed environmental laws and regulations and in the interest of informing sound regulation and public policy.[1] Our members include leaders in the ongoing transition to cleaner energy in the United States. PGen and its members work to ensure that environmental regulations support a clean, safe, reliable, and affordable electric system for the nation.

II. Comments

A. EPA Should Provide an Adequate Legal Basis for its Proposed Data Collection under CAA section 114.

Under section 114 of the CAA, EPA is authorized to require the owners and operators of emission sources to provide information that EPA will use to (i) develop a state implementation plan (SIP) or CAA regulations; to determine if a person has violated CAA requirements; or to carry out any provision of subchapter I of the CAA. 42 U.S.C. § 7414(a). Any request for information under this provision must also be "reasonable." *Id*. § 7414(a)(1)(G). EPA has failed to satisfy these requirements with its proposed amendments to the AERR.

[1] Additional information on PGen and its members can be found at PGen.org.

EPA provides a number of reasons for its proposed revisions to the AERR, but none of them satisfies section 114's requirements. EPA notes, for instance, that it might use the data it collects under the revised AERR in future rulemakings, including future residual risk and technology reviews. This vague assertion is far too broad to satisfy section 114. EPA must identify the specific rulemaking for which it is requiring information. In describing its need for information to be collected under the revised AERR, EPA says it needs data for risk assessment. 88 Fed. Reg. at 54,128. But EPA routinely evaluates risks posed by criteria air pollutants ("CAP") and HAPs using the existing AERR reporting structure and rulemaking-specific information collection. EPA has not explained why that reporting and information collection is now inadequate. Moreover, the residual risk assessment required under Section 112(f) is a one-time occurrence that is undertaken eight years after a HAP standard for a source category is promulgated. Those risk assessments have already been completed for a great many source categories. It is unreasonable and overly-broad for EPA to require all sources to submit data on a continuous basis just for a handful remaining risk assessments.

EPA also cites environmental justice considerations as a reason to require additional reporting. *Id*. at 54,127. While general administration and EPA policy to evaluate environmental justice as part of carrying out the Agency's statutory requirements may be appropriate, EPA has no independent legal grounds under Section 114 of the Clean Air Act for requiring reporting based solely on environmental justice factors.

EPA also suggests that the additional information it proposed to collect under AERR may be useful in implementing the national ambient air quality standards ("NAAQS") program. EPA says, for instance, that HAPs can play a role in $PM_{2.5}$ and ozone formation. *Id*. at 54,128. EPA also says that cost-benefit analysis used in NAAQS rulemakings could be better informed with additional HAP data. *Id*. at 54,129. These rationales are vague and unconvincing. Indeed, cost considerations related to NAAQS are particularly weak, given the CAA's prohibition on considering costs in setting the standards.

B. EPA Has Not Adequately Justified the Cost or Burdens Imposed by the Proposed Rule.

EPA claims that one-time data collection efforts in support of individual rulemakings are less efficient than continuing requirements to collect and report data, citing costs associated with initial efforts to collect information as the primary inefficiency. *Id*. at 54,126. Although owners and operators (or States) will eventually become more adept at compiling the information EPA would request under its Proposed Rule, the revised AERR will continue to result in significant costs for reporters.

Starting in 2027, EPA estimated the yearly average per facility burden to be 27 hours when using in-house personnel to accomplish emission reporting. One PGEN member estimates, however, a minimum of 80 hours per facility to gather the initial information and develop new standard processes/procedures for future ongoing reporting. Since most electric utilities own and/or operate more than one facility, the overall burden is increased. In addition to the initial data gathering, annual reporting will require utilities to review and confirm the initial data submitted, prepare updates or changes where applicable, and conduct the reporting. The lack of clarity related to mobile sources will also increase the time needed to report. Annual reporting is

estimated to take a minimum of 40-80 hours per facility. Companies or individual facilities may need to add FTE to staff to accommodate the additional data collection and reporting.

EPA acknowledges that the overall burden of the revised AERR will be larger than a one-time collection effort. *Id*. at 54,127. In fact, EPA has identified significant, continuing costs:

> Regarding the costs of this proposal, the proposed rule's cost to State, local, Tribal government authorities is estimated at $28.5 million on average annually from 2024 to 2026, and then is estimated at $27.7 million in 2027. For owners and operators of affected sources, the proposed rule's cost is estimated at $89.0 million on average annually from 2024 to 2026, and then is estimated at $450.1 million in 2027. Thus, the proposed rule's total cost impact is estimated at $117.4 million on average annually from 2024 to 2026, and then is estimated at $477.9 million in 2027.

Id. at 54,194. Further, EPA projects that many entities will become subject to new requirements:

> Regarding the population of affected sources for the 2024–2026 time period, the EPA estimates the proposed rule would impact 85 State/local/Tribal respondents and 820 owners/operators of facilities outside of States' implementation planning authority. Owners/operators for an estimated 40,315 facilities per year would also need to prepare for new reporting requirements starting in 2027. Also, during this period, the EPA estimates that owners/operators of 13,420 facilities would report source test and performance evaluation data each year. Based on these proposed requirements, States would continue to collect emissions data from owners/operators of an estimated 13,420 facilities (based on State regulations requiring owners/operators to do so). Starting in 2027, the EPA estimates that, under the proposed AERR, owners/operators from about 129,490 facilities would be required to report HAP as would about 235 owners/operators for reporting small generating unit data.

Id. According to EPA's own calculations, the Proposed Rule will result in hundreds of millions of dollars in annual compliance costs and vastly expand the number of entities subject to reporting requirements. EPA would impose all of these costs without any clear regulatory purpose for collecting the data. Accordingly, EPA's justification for the Proposed Rule not only is inconsistent with the requirements of section 114, it is objectively unreasonable and should be abandoned or significantly revised.

C. EPA Does Not Claim that a Voluntary Program Is Insufficient.

EPA previously determined that voluntary collection of HAP data was sufficient. *See id*. at 54,129. Indeed, the voluntary program will remain in effect for non-major sources and for

greenhouse gas ("GHG") reporting. *Id*. EPA has not explained why voluntary programs are appropriate for these sources and for GHG emissions but are inappropriate for HAPs. Without such an explanation, EPA has not provided an adequate basis for its Proposed Rule. Instead of resorting to unnecessarily burdensome mandatory reporting requirements, EPA should explore alternatives, including potential enhancements to the existing voluntary program so that EPA can obtain useful data without imposing such significant changes to the AERR.

D. EPA Should Address Duplicative or Contradictory State Reporting Requirements.

The Proposed Rule notes that many states have their own reporting requirements and that state programs could be duplicative or contradictory. *Id*. at 54,130. EPA does not attempt to address this except to suggest that states adopt EPA's proposed requirements. EPA has not evaluated whether states are likely to take such action or what the impact of any resulting inefficiencies will be for states and regulated sources. EPA should undertake such an evaluation and look for opportunities to more effectively address duplicative or contradictory requirements. EPA could, for instance, provide a mechanism by which state programs could replace EPA's proposed requirements or find other ways to incentivize uniform reporting standards.

Arkansas is one example where issues with reporting HAPs were experienced. As a result, the state modified its program so that regulated entities have the option to report total HAPs. While we do not recommend the need to report HAPs, reporting total HAPs would be less of a burden.

E. EPA Should Establish Reporting Thresholds for Insignificant Activities.

In setting reporting thresholds for HAPs from major sources and areas sources, EPA considered, among others, "a desire to focus data collection efforts on facilities with the potential to cause significant and ongoing impacts while avoiding less beneficial reporting by many small, lower impact facilities." 88 Fed. Reg. at 54,133. This same desire supports EPA establishing reporting thresholds for insignificant activities that are located at major and area sources also. Accordingly, we request that EPA consider adding such thresholds to the rule. Without such thresholds, the Proposed Rule would add quite a bit of burden to report emissions at major sources for activities that currently meet sources' State reporting exemption criteria (e.g., comfort heating), as well as for area sources that have non-permitted emission sources like very small boilers/heaters, etc. Adopting a threshold for insignificant activities would avoid "less beneficial reporting by many small, lower impact" activities. *Id.*

F. EPA's Proposed Collection of Source Test Data Is Unnecessary.

EPA has proposed to require sources to report test data. *Id*. at 54,152-53. This is an especially burdensome requirement that, as proposed, is vague and unsupported. EPA says that it intends to use this information to evaluate and potentially update emission factors. *Id*. At this time, since emissions for almost all the 188 HAPs covered under the proposed rule would not be based on physical monitoring, individual facility emissions will be overly conservative. Of the 188 HAPs covered under the proposed rule, approximately 30 have available emission factors. There are less burdensome approaches for accomplishing that goal, including use of a more targeted, one-time request for emission information when the Agency actually intends to update an emission factor, rather than a broad and continuing reporting obligation.

G. Reporting of Small Generating Units Is Unnecessary.

EPA notes its interest in intermittent sources. *Id*. at 54,153. It also notes an interest in high energy demand days and possible linkages to ozone concentrations. *Id*. EPA may be interested in this information, but it has not identified a regulatory purpose justifying this proposed data collection. That is not consistent with section 114. To establish a sufficient basis for collecting data, EPA should identify a regulatory action that is under consideration that these data would help to inform.

EPA also proposes a one-time collection or to require reporting only for states that have ozone nonattainment areas or that are linked to ozone nonattainment areas. *Id*. at 54,155. Although this data collection is not supported by the existing record, EPA should adopt the narrowest possible requirements to avoid undue burdens or that reach beyond the Agency's regulatory role.

H. EPA's Clarification Regarding Mobile Sources is Overly Burdensome.

EPA's Proposed Rule would require point source emissions to include emissions from mobile sources that operate primarily within facility's boundaries. *Id*. at 54,175. This is an exceptionally burdensome requirement that will, in most instances, involve very minimal emissions. For example, some power plants may have mobile sources for facility operations, but these mobile sources are few and have very small HAP emissions. It is also not clear to what regulatory purpose EPA could put this information. As noted above, section 114 requires that EPA identify how the data it collects will be used to implement Clean Air Act programs. EPA should remove this requirement from the Proposed Rule.

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