



November 17, 2023

**Via eRulemaking Portal**

U.S. Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mail Code 2822T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Attn: Docket ID No. EPA-HQ-OAR-2004-0489**

Re: Comments of American Municipal Power, Inc. on National Emission Standards for Hazardous Air Pollutants: Revisions to the Air Emissions Reporting Requirements – Proposed Rule, 88 Fed. Reg. 54,118 (August 9, 2023).

Dear Administrator Regan and Agency Staff:

In response to the Proposed Rule referenced above, American Municipal Power, Inc. (“AMP”) hereby submits for the record the following comments. The Proposed Rule would require burdensome and costly reporting by small electric generators of fuel use and Hazardous Air Pollutant (“HAP”) emissions data, including data for sources considered de minimis or exempt from reporting requirements under state rules, while imposing unnecessarily tight reporting deadlines for submitting those data. The Proposed Rule lacks sufficient specificity regarding applicability to some categories of sources. It is also an unexplained departure from EPA’s historical practice of gathering emissions information through source-specific Information Collection Requests (“ICR”) and would impose information collection burdens on both states and entities that they are not well-suited to implement. AMP therefore requests that the Environmental Protection Agency (“EPA”) amend the Proposed Rule to, at a minimum, provide an exemption for small electric generators from the new fuel use and HAP emissions data reporting requirements, and clarify mobile source monitoring and reporting requirements. Alternatively, the EPA should withdraw the Proposed Rule and address emissions data

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reporting through source-category specific rulemaking authorities (e.g. NESHAP or NSPS programs).

## **I. BACKGROUND**

AMP is the nonprofit wholesale power supplier and services provider for 132 member municipalities in the states of Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia; as well as the Delaware Municipal Electric Corporation, a joint action agency with eight Delaware municipal members. AMP's members own and operate municipal electric systems and collectively serve approximately 650,000 residential, commercial, and industrial customers with a system peak of more than 3,400 megawatts ("MW"). AMP's core mission is to be public power's leader in wholesale energy supply and value-added member services. AMP offers its members' municipal electric systems the benefits of scale and expertise in providing and managing energy services.

AMP's renewable and advanced power assets include a variety of base load, intermediate and distributed peaking generation using hydropower, wind, landfill gas, solar and fossil fuels, as well as a robust energy efficiency program. AMP has actively worked for more than a decade to diversify our power supply portfolio to significantly expand our renewable assets. AMP and our members own, operate, and maintain multiple hydroelectric projects situated along the Ohio River at existing Army Corps of Engineers locks and dams, along with fossil fuel assets that currently include a 368 MW ownership share of the 1,600 MW coal-fired Prairie State Generating Company located in Lively Grove, Illinois, and the 685 MW natural gas combined cycle AMP Fremont Energy Center in Fremont, Ohio.

AMP and our Members also own and operate multiple small diesel and natural gas peaking units that generally operate less than one-hundred hours per year and are tested every three years to verify that emissions meet the requirements of applicable standards. These units include Reciprocating Internal Combustion Engines ("RICE") that may be subject to National Emission Standards for Hazardous Air Pollutants ("NESHAP"),<sup>1</sup> and Stationary Compression Ignition ("CI") or Spark Ignition Internal Combustion Engines that may be subject to New Source Performance Standards ("NSPS").<sup>2</sup>

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<sup>1</sup> 40 C.F.R. Part 63, Subpart ZZZZ.

<sup>2</sup> 40 C.F.R. Part 60, Subpart IIII or Subpart JJJJ.

## II. COMMENTS

### A. The Final Rule should exempt small electric generators from the new fuel use and HAP emissions data reporting requirements.

The Proposed Rule would result in thresholds for emissions reporting that are unnecessarily low. Emissions from sources that are considered de minimis or are otherwise exempt under state permitting and reporting rules will have to be monitored, with emissions tracked and reported to EPA under the Proposed Rule. For example, the proposal could expand monitoring and reporting obligations to owners of emergency generators at office buildings, hospitals, and municipal water treatment plants, all of which are currently exempt from emissions reporting requirements, with no obligations beyond tracking hours of operation. Under the Proposed Rule, AMP, our Members and Member customers may be required to inventory and calculate emissions from these emergency generators and report this data through EPA's electronic portal.

Emissions from these small generators are low because they run infrequently, which is why many states either exempt them outright or issue permits for them with few requirements. Indeed, even EPA's RICE NESHAP regulations<sup>3</sup> include only minimal monitoring requirements for emergency engines.<sup>4</sup> EPA has failed to adequately justify establishing the low emission thresholds that trigger new reporting obligations for these small, infrequently operating generators under the Proposed Rule. Similarly, the Proposed Rule requires monitoring and reporting of daily fuel use from certain small generating units that has not previously been required to be reported to EPA. Such daily reporting is not justified for small generators that operate infrequently and have inherently low emissions.

The Proposed Rule would result in duplicative data submission obligations in the case of certain small generators. For example, many small diesel RICE peaking units currently report emissions greater than one ton per year and certain testing data to their respective state agency. Under the Proposed Rule, the same data from these units will continue to be submitted to the respective states and that information plus additional HAP emissions information below one ton per year must separately be submitted to EPA via the electronic portal.<sup>5</sup> EPA has not justified the necessity of this duplicative data submittal requirement for rarely used low emitting sources.

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<sup>3</sup> 40 C.F.R. pt. 63, subpart ZZZZ.

<sup>4</sup> See 40 C.F.R. § 63.6655(f) (requiring reporting of hours of operation).

<sup>5</sup> See Sec. IV.A.8 of the Proposed Rule ("Expansion of Point Source Definition to Include HAP") and Table 1.B to Appendix A

There appears to be little value in requiring owners and operators to report this data directly to EPA, given the nature of the data and that states already collect and provide most of the same data to EPA. AMP and our Members report emissions (including HAP emissions) as required by the respective states in which our generating assets are operated. These reported emission calculations are based on hours of operation, fuel type and consumption, and EPA's AP-42 emission factors for criteria pollutants and HAP emissions. Both existing and new generators will likely use this same methodology to calculate and report emissions under the Proposed Rule, compounding the duplicative nature of the proposal.

The Proposed Rule's monitoring, recordkeeping, and reporting requirements would obligate a significant number of owners and operators, many of whom would have had no prior interactions with EPA or knowledge of its reporting systems, to now become familiar with EPA's Combined Air Emissions Reporting System software and emissions calculations methodologies.<sup>6</sup> Operator training, account maintenance, and ongoing federal reporting obligations would be in addition to existing state electronic reporting obligations and the submittals required by the proposed RICE electronic reporting rule (CEDRI/CDX),<sup>7</sup> all of which have distinct requirements. For a single RICE engine, that is a total of three reporting systems, with additional technology and training necessary to support compliance reporting for emission sources that typically emit less than two tons of pollutants per year in total.

The expanded scope of these proposed duplicative reporting obligations, to include such a large number of newly obligated owners and operators, is unnecessarily burdensome and inefficient. The University of Wisconsin-Madison study on the relationship between emissions and electricity demand cited by EPA<sup>8</sup> does not support collection of fine-scale emission data. The study covers the 2003-2014 period and does not account for the significant changes in the generation mix occurring since then, including coal plant retirements and increased deployment of natural gas fired and renewable resources, which have decreased emissions of all pollutants evaluated in that study. Subsequently, occurrence of high electricity demand days (HEDD) will not generally result in materially increased SO<sub>2</sub> emissions since most resources responding to that peak demand will be natural gas fired generators and will include some renewable resources, along with significant peak-shaving contributions by demand response resources.

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<sup>6</sup> 88 Fed. Reg. 54123.

<sup>7</sup> 88 Fed. Reg. 41361.

<sup>8</sup> 88 Fed. Reg. 54153.

The Proposed Rule will also impose shorter, and different, reporting deadlines than those under state reporting requirements. Tighter reporting deadlines for submitting an expanded scope of emissions data would be difficult to meet, especially for both new and small entities with limited, or nonexistent environmental staff. EPA has not adequately justified these additional burdens on small entities.

**B. The definition of “Mobile Source” in the Final Rule should be clarified and not infringe on other regulatory programs.**

The Proposed Rule would require reporting of fuel use data for mobile sources that operate at a point source to assess whether these mobile sources exceed the proposed reporting thresholds. AMP agrees with the American Public Power Association that EPA should clarify the proposed regulatory language governing how to determine which mobile sources must be included, bearing in mind that most of the mobile source emissions at power plants are transitory and occur primarily during planned outages. In addition, emissions from mobile sources, as defined in the Proposed Rule (“a motor vehicle, nonroad engine or nonroad vehicle”),<sup>9</sup> confuses the clear delineation between stationary source regulations in Title I of the Clean Air Act (CAA) and Title II, which regulates “moving sources,”<sup>10</sup> including those meeting the definition of mobile sources in the Proposed Rule. This risks double counting emissions already accounted for in state mobile source emission budgets. Further, EPA seems to be attempting to create owner and operator monitoring and reporting obligations for mobile sources similar to those in the NSPS or NESHAP standards pertaining to stationary RICE units. However, EPA has not identified statutory authority to create mobile source obligations for the owners or operators of those sources regulated under Title II of the Act using a Title I rulemaking.

**C. EPA’s proposed data collection approach, One-time Collection Option, and alternatives are overly burdensome to AMP and our Members.**

The Proposed Rule includes a preferred approach to data collection under the Air Emissions Reporting Requirements, along with several options and alternatives.<sup>11</sup> AMP appreciates the thought and consideration that went into developing this proposal. However, we do not believe any of these proposed data collection methods can be implemented without creating significant and unnecessary financial and regulatory burdens on AMP and our Members. AMP and our Members’ resources, including: diesel assets that are infrequently used; natural gas RICE units; and gas turbines not otherwise

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<sup>9</sup> 88 Fed. Reg. 54210.

<sup>10</sup> See U.S. EPA, *Clean Air Act Title II - Emission Standards for Moving Sources, Parts A through C*, <https://www.epa.gov/clean-air-act-overview/clean-air-act-title-ii-emission-standards-moving-sources-parts-through-c>.

<sup>11</sup> 88 Fed. Reg. 54154.

subject to Part 75; already report emissions data as required by the states in which they operate. This renders the reporting requirements in the Proposed Rule unnecessarily duplicative, regardless of the option selected.

EPA has not identified specific problems or clear statutory authority that justifies the unprecedented expansion of data collection requirements under the Proposed Rule.

**D. Cost estimates in the Regulatory Impact Analysis (RIA)<sup>12</sup> discussing annual total owner and operator burden are underestimated.**

EPA's assumption that only one-third<sup>13</sup> of affected owners and operators (of which EPA estimates there are 40,315)<sup>14</sup> will expend resources reporting over the 2024-2026 period is unsupported and incongruent with expenses associated with implementation of new compliance measures by affected sources. Each owner and operator subject to the Proposed Rule will spend time annually complying with expanded monitoring and reporting requirements.

AMP and our Members will undertake significant investments of time and resources to ensure we can adequately and accurately capture operating data and fuel consumption on an hourly basis. This includes, *inter alia*, new hardware, SCADA setup, IT support, and data warehousing. None of these additional costs are included in table 3-20 of the RIA. Costs could be several thousand dollars per emissions unit (not per facility or source level). AMP encourages EPA to develop a more realistic representation of compliance expectations that recognizes the challenges faced by small sources.

**E. EPA should, in the alternative, withdraw the Proposed Rule and address any necessary changes to reporting requirements through the Information Collection Request (ICR) framework, in cooperation with state agencies.**

The expanded reporting requirements contained in the Proposed Rule serve the same type of information gathering role that EPA has historically achieved using ICRs. By relying on its authority under CAA sections 113 and 114 as the basis for the Proposed Rule rather than using traditional ICRs,<sup>15</sup> EPA is stepping outside past practice and potentially its legal authority to propose a regulation in lieu of future ICRs. EPA could require owners and operators to submit HAP emission data, but this would require

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<sup>12</sup> *Regulatory Impact Analysis for the Proposed Revisions to the Air Emissions Reporting Requirements*, EPA-452/P-23-003 (July 2023).

<sup>13</sup> 88 Fed. Reg. 54180.

<sup>14</sup> 88 Fed. Reg. 54194.

<sup>15</sup> Contrast this with discussion in the RIA: "the authority for the EPA to amend the reporting requirements for CAPs as proposed in this rulemaking stems from these same CAA provisions that the EPA relied upon to promulgate the original AERR and amend it in the past." RIA at 11.

revising the applicable standards to require such reporting, much like what was done in the recent proposal to include electronic reporting for RICE units subject to NESHAP and NSPS.<sup>16</sup>

In this Proposed Rule, EPA announces an expansive new view of its authority under CAA §114 that would allow it to collect data not from a single source, owner or operator on a one-time basis, but from essentially all industries across the United States in perpetuity. Not only is this new view counter to several decades of EPA practice and a misreading of the CAA, but is also precisely the authority EPA previously disavowed having and exactly the Congressional authorization needed to address the findings of the 2007<sup>17</sup> and 2022<sup>18</sup> Inspector General Reports.

EPA's CAA section 301(a) argument is similarly unavailing.<sup>19</sup> While “[t]he Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act,”<sup>20</sup> this authority cannot extend to regulations that have no basis in the statute. Congress has not extended EPA's emissions inventory data collection authority to include HAP emissions.

The Proposed Rule appears to bypass states in favor of a federally mandated reporting system without even attempting to work with the states to obtain the data needed to improve EPA's emissions inventories. EPA should make a concerted effort through the state performance agreement program or via memoranda of understanding to meet its additional emissions data needs.

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<sup>16</sup> 88 Fed. Reg. 41361.

<sup>17</sup> U.S. EPA Office of Inspector General, *Improvements in Air Toxics Emissions Data Needed to Conduct Residual Risk Assessments*, Report No. 08-P-0020 (October 31, 2007), <https://www.epa.gov/office-inspector-general/reportimprovements-air-toxics-emissions-data-needed-conduct-residual-risk>.

<sup>18</sup> U.S. EPA Office of Inspector General, *The EPA Needs to Develop a Strategy to Complete Overdue Residual Risk and Technology Reviews and to Meet the Statutory Deadlines for Upcoming Reviews*, Report No. 22-E-0026 (March 30, 2022), <https://www.epa.gov/office-inspector-general/report-epa-needs-develop-strategy-completeoverdue-residual-risk-and-0>.

<sup>19</sup> 88 Fed. Reg. 54196.

<sup>20</sup> 42 U.S.C. § 7601(a).

### III. CONCLUSION

Thank you for your consideration of these comments. AMP looks forward to working with the Agency concerning this rulemaking, and we thank EPA for this opportunity to provide input on these important matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "AW Ward". The signature is fluid and cursive, with the first part being "AW" and the second part being "Ward".

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