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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



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U.S. Environmental Protection Agency
EPA Docket Center
Docket ID Number:
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2004-0489; Notice of Proposed Rulemaking on Revisions to the Air Emissions Reporting Requirements (88 FR 54118)

To Whom it May Concern:

The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) notice of proposed rulemaking (NPRM) regarding the proposed revisions to the Air Emissions Reporting Requirements (AERR) rule, which was published in the Federal Register on August 9, 2023¹.

ADEQ staff reviewed the NPRM and offer the following summary of concerns as official comments to the docket. The primary issues identified by ADEQ pertain to increased data collection, shortened reporting window, enforcement, and flexibility.

Shortened Reporting Window

ADEQ recommends that EPA finalize reporting deadlines that are no shorter than 12 months after the end of the inventory year (e.g., December 31 instead of May 31).²

Shortening the reporting window will cause additional burden to regulatory agencies and industry and negatively impact data quality.

¹ See [88 Fed. Reg. 54118](#).

² [88 Fed. Reg. 54158](#).

EPA is proposing to significantly shorten the time states, locals, and tribes (SLTs) have to review and apply Quality Assurance/Quality Control (QA/QC) procedures to emissions inventory data. Currently states have 12 months and 15 days to review emissions inventory data before submitting it to EPA. If the proposed rule is finalized without changes, this window will be shortened to five months. Not only are the proposed reporting deadlines unreasonable for the current emission inventory review process, the proposed increased data collection requirements (discussed below) greatly augment their impracticality.

Industry reports emissions inventory data on an annual basis. Facilities need time to compile data once the year ends. This must be done early in the year and cannot be accomplished in December of the same reporting year. Less time to report emissions could result in lower quality data because industry commonly has other reporting requirements they must balance at the beginning of the year and may not be able to meet all of the deadlines.

ADEQ staff spend considerable time and resources to ensure facilities, in particular small businesses, accurately submit emissions data. Depending on the emissions inventory year, ADEQ staff review emissions inventory reports for 50-70 facilities. After receiving the data from industry, ADEQ staff review data through level 3 QA/QC (human review). This process currently demands roughly 1600 hours spread over 8 employees even after the most robust available automated QA/QC procedures have been applied. ADEQ is concerned that the extensive new rule requirements will cause significant time and resource challenges. Currently, ADEQ operates an extremely efficient and streamlined emissions inventory review process and will be adopting the Combined Air Emissions Reporting System (CAERS) for the 2023 emissions inventory reporting year; however, ADEQ has determined that, even with a well-run CAERS program, the influx in new pollutants and sources will greatly strain state resources.

If the proposed rule is finalized, it will likely result in poor data quality, have a negative impact on scientific analysis, and may lead to poor regulatory decision-making at all levels of government - state, local, tribal, and federal. Inaccurate data may negatively impact the quality of the air our citizens breathe.

Increased Data Collection and Limited Flexibility

EPA's proposal includes new reporting requirements for all 188 HAPs. Further, EPA has determined that an estimated 34,000 additional small facilities would be subject to the proposed AERR revisions.³ EPA has proposed two scenarios: 1) the SLT may report on behalf of the facilities in their jurisdiction, or 2) the facilities may report directly to EPA.

ADEQ has an interest in reporting on behalf of facilities in order to ensure the accuracy of data reported for regulatory purposes. ADEQ recommends that EPA allow agencies the flexibility to report for some but not all facilities (divided by class of facility) to ensure better data quality as states build out the regulatory reporting requirements and infrastructure needed.

³ [88 Fed. Reg. 54147](#).

It may be infeasible for an agency to report on behalf of a facility if the facility does not already report air emissions to the agency. As written, the rule revisions do not allow regulatory agencies to assume the middleman role for a subset of sources for which it would be convenient and beneficial. In the proposal, regulatory agencies must report HAPs for all sources in their jurisdiction or none.

Further, the current proposal does not provide robust definitions for certain small electric generating units (EGUs), portable sources, nor mobile sources subject to the proposed AERR revisions. How these sources are determined could exponentially increase the number of new sources. Providing clear guidance on how newly subjected sources are to be identified would aid SLTs that choose to report on behalf of facilities in their jurisdiction.

In cases of nonpoint sources using EPA estimation tools, EPA proposes that SLTs would provide documentation describing the emissions estimation process and the QA/QC procedures utilized. ADEQ recommends that EPA provide specific details and guidance regarding adequate documentation and approvable QA/QC procedures. ADEQ also recommends that EPA ensure that prescriptive and time-consuming documentation requirements that further strain resources are not imposed on SLTs, allowing for concise documentation with as much format flexibility as possible. EPA should work directly with end users, particularly state and local agencies, for input on the development of emissions estimation tools.

Insufficient Time to Achieve Regulatory Amendments Needed

If ADEQ reports HAPs to EPA on behalf of owner/operators, the state will need to revise the state reporting rule to require facilities to report HAPs data at increased levels of detail and frequency and expand the rule's applicability. EPA's proposal only provides SLTs three years to revise rules governing reporting requirements before the revised AERR must be fully implemented. The state of Arizona would not be able to complete the state legislative process in that time frame. ADEQ recommends that EPA revise the implementation timeline of the rule to allow at least five years for the needed regulatory changes if required for air agencies to obtain approval to report HAP emissions on behalf of owners/operators.

Enforcement

Another area of concern surrounds enforcement. The proposed revisions do not clearly identify who would be enforced upon if a state agency assumes the responsibility of reporting emissions for a facility. Will EPA enforce against the SLT or the facility? ADEQ recommends that EPA should further clarify how compliance with the new rule will be enforced in scenarios where SLTs provide data on behalf of facilities. Additionally, ADEQ recommends that SLT compliance liability be limited to the failure to submit reported emission data received by the agency, not for failure to submit data that was never received by the SLT.

Likewise, if industry reports directly to EPA and they do not meet all the requirements, the proposed revisions do not specify if the SLT or if EPA will enforce. ADEQ recommends that EPA clarify who is responsible for review of the data if industry reports directly to EPA and not the SLT.

Conclusion

ADEQ appreciates the opportunity to provide these comments on EPA's proposed rulemaking regarding revisions to the Air Emissions Reporting Requirements. To summarize, ADEQ recommends that:

1. EPA finalize reporting deadlines that are no shorter than 12 months after the end of the inventory year (e.g., December 31 instead of May 31),⁴
2. EPA allow agencies the flexibility to report for some but not all facilities,
3. EPA allow at least five years for the needed regulatory changes if required, and
4. EPA further clarify how compliance with the new rule will be enforced.

If you have any questions, please contact Hether Krause, Deputy Assistant Director, at 602-771-4655 or krause.hether@azdeq.gov. Thank you for your consideration of ADEQ's comments.

Sincerely,

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Hether Krause

Deputy Assistant Director

⁴ [88 Fed. Reg. 54158](#).