



November 9, 2023

U.S. Environmental Protection Agency  
EPA Docket Center, OAR, EPA-HQ-OAR-2004-0489  
Mail Code 28221T, 1200 Pennsylvania Avenue NW  
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2004-0489, Revisions to the Air Emissions Reporting Requirements –  
EPA Proposed Rule

Dear Administrator Regan,

Thank you for taking the time to consider WESTAR’s comments regarding the proposed rule, Revisions to the Air Emissions Reporting Requirements. We would also like to thank your staff for taking the time to listen to WESTAR states’ questions, concerns, and issues when they began looking at potential revisions to this rule over two years ago. These comments address the use of the Combined Air Emissions Reporting System (CAERS), reporting hazardous air pollutants, point sources and nonpoint sources, and the time and resources that may be required of state agencies by the requirements in this proposal.

## CAERS

The current Air Emissions Reporting Requirements (AERR) proposal indicates that CAERS will be relied upon heavily by EPA to collect emissions from facilities and from states. In the proposal, EPA states: “To avoid duplicative reporting burden for the owners/operators of facilities for which the associated State is collecting Hazardous Air Pollutant (HAP) emissions, a State would need to choose to participate in CAERS using one of the supported approaches. First, a State may choose to have owners/operators report data through CAERS to the EPA and then use CAERS to review and/or transfer the data to the State’s own data system. Second, a State may choose to work with the EPA to build a direct connection between the State’s data system and CAERS, so that data transfers can happen even more easily. Third, a State may choose to adopt CAERS as their emissions data reporting system.” EPA has consistently stated that the use of CAERS is not mandatory. We request that EPA clarify its stance on the voluntary use of CAERS within the current rule proposal.

While it is understandable that EPA would rely heavily on the system that was created in coordination with some states, it concerns states that do not use CAERS that they may need to begin interfacing with CAERS in addition to their state data system. Several Western states have invested heavily in their own emissions reporting system to the point that it would be too expensive to change systems and would require more time to transition than the two years allowed by the proposal. For those states that do choose

to interface with CAERS, WESTAR states request that EPA be more specific about the additional resources they plan to provide for making that transition. Many Western states do not have a large staff dedicated to emissions reporting. These states will require more funding and training for their programmers and technical staff to integrate CAERS and other database connections. If EPA does not provide additional funding, this would place a costly burden onto states already working under increasing resource scarcities and funding shortfalls.

## HAPs

EPA's current proposal requires certain sources to report HAPs directly to EPA based on the proposed reporting thresholds in Table 1B to Appendix A of Subpart A. Alternatively, EPA proposes to allow states to collect the data and submit it to EPA. State collection of the HAPs must meet EPA's requirements and the State's data system must be approved by EPA. Once the State's data system is approved, it would then be mandatory for that state to report the HAPs. EPA proposes HAP reporting to begin 3 years after finalization of the rule, in 2027, for the 2026 inventory year. Under this scenario, states would be required to submit HAP collection programs to EPA by early 2026. Many states will be unable to meet this timeline. While some states could meet this deadline, others indicate that it could take up to 5 years to work through the necessary legislative and administrative processes to fully align their own statutes and rules with new reporting requirements. WESTAR recommends that EPA make the new HAP reporting requirements effective 5 years after the finalization of the AERR rule.

WESTAR appreciates EPA's proposal to collect HAPs to help further refine chemical speciation and improve air quality modeling as stated in the proposal. However, there is concern that the expansion in volume of data collection within this proposal could lead to significant deterioration in the quality of data collected. WESTAR states would like clarification regarding several issues which could affect states that currently collect HAPs. Some of the WESTAR states collect HAPs for major sources only. It is possible that some of the HAPs reporting thresholds proposed by EPA would require smaller sources to begin reporting. Can states take responsibility for reporting some HAPs but not all? States could collect major point sources, but non-major sources could be reported directly to EPA. States would like the option to report HAPs from sources that they are already collecting.

As mentioned above, there are many HAP sources with emissions greater than the 10 tons per year (tpy) reporting thresholds which would include emissions reporting information that states are already collecting as Title V sources. But there are many other sources with emissions below the reporting threshold that may not submit HAP emissions to states. For example, depending on how EPA estimates emissions, some smaller landfills could be required to report HAPs based on generic tonnage handling and inputs. In some states, this could include smaller Tribal sources which have reporting exemptions. There may also be small businesses that are not required to get a permit from an air agency that would now be required to report HAPs. We request that EPA provide more detail about how smaller sources and sources subject to Tribal exemptions will be treated under the proposed HAPs reporting requirements. Alaska, in particular, has communities with full exemptions for tribal reporting at landfills with non-standard incinerators and burn units. Many of these communities fall under tribal jurisdiction but are not part of Indian Country due to historical precedent and the Alaska Native Claims Settlement Act. Even if these communities are exempted under the AERR's proposed HAPs reporting thresholds, this could set a

precedent whereby EPA will continue reducing HAPs thresholds until all or most of Alaska's remote landfills are required to report. This would not only place an unwarranted reporting burden on remote communities with limited resources, but it may also disincentivize landfill operators from coordinating with state authorities for fear that they may acquire new reporting requirements. EPA needs to properly define its intentions regarding HAP data collection and provide clarity on how native communities will be treated.

States appreciate access and the option to conduct quality assurance checks (QA) of the NEI data but if EPA is collecting HAPs data through CAERS, the final responsibility for QA should fall to EPA. If this is the case, will EPA fully rely on the quality control (QC) built into CAERS rather than using the more detailed 'human QC' states employ (e.g., looking through individual submissions and comparing them to permits)? In addition to HAPs data collection, the AERR proposal does not provide detail on the QC of emissions they will collect if states opt to have owners/operators report through CAERS. States perform significant quality control and support to submitters beyond the basic automated QC built into emissions inventory collection systems. This includes individually contacting those submitting source emissions data. State, local, and Tribal air agencies assist with highly technical questions and emissions troubleshooting as well as individually walking through the emissions inventory system and assisting in the submission of data into the system. Hundreds of hours per inventory cycle are spent with this individualized care. Will EPA also provide similar assistance to data reporters? If EPA plans to continue relying on state agency staff to provide QA/QC for data reporting, additional funding to air agencies would be necessary.

## Point Sources

EPA proposes that portable and mobile sources that are used to serve a point source would need to be reported with the point source's emissions. WESTAR requests that EPA respond to the following issues with this proposal. First, nonroad emissions are already counted in MOVES, creating a possibility for double counting. We request that EPA clarify the sources that would be included in this part of the proposal and assurances that they will not be counted twice because of the MOVES model. The second issue is how states would handle portable and nonroad mobile sources that are used at multiple facilities and within multiple jurisdictional boundaries. If the proposal is limited to mobile and portable facilities that remain on site at a particular point source, then there is no concern. However, a nonroad mobile source operated at a gravel pit within one state that is then moved to a gravel pit in a different state would create confusion about who should collect the emissions data. WESTAR proposes that EPA include in their definition of portable sources the following clarifying statement: "...this applies only to sources used at a single stationary source site within a state or designated jurisdiction, and not those where site location moves across state boundaries or jurisdictions."

EPA proposes requiring states to treat aircraft, ground support equipment (GSE), and rail yards as point sources and to either (1) report aircraft activity data (i.e., LTO data) for some or all aircraft and emissions from rail yards, (2) report emissions for some or all aircraft, GSE, and some or all rail yards, or (3) comment on and/or accept EPA's activity data and emissions estimates. If EPA requires collection of these data, it will require additional staff resources beyond current state capacity at some states. For example,

some of the small airports do not have regular flight schedules that would allow for calculation of landing and takeoff emissions. A per capita emissions factor may also not be accurate. Western states ask for more information on how these emissions are calculated and for additional resources to evaluate EPA's estimates.

## Nonpoint Sources

EPA proposes to continue allowing states to report their own nonpoint data but proposes the requirement to include documentation. While it is understandable that there should be documentation available for quality control and quality assurance purposes, states are concerned that including additional documentation beyond what they already provide could increase the workload of some agencies beyond their current capacity. If EPA simply requires the worksheets and calculations that a state uses to calculate their nonpoint source emissions, that may be okay. Additionally, we request that if states submit input files through EPA tools, then that should be sufficient documentation.

### Collecting data in Tribal areas

The proposal that "states need to include total activity input (including Indian country) when reporting nonpoint data unless a state determines that an Indian tribe reports nonpoint tool inputs for Indian country that overlaps with a state's counties" needs to be further clarified because states do not have authority to collect activity data that is specific to Indian country. Additionally, EPA should be aware that there is litigation related to Indian Country boundaries that has been ongoing for years, with no timetable for resolution. This places states and Tribes in an impossible position of defining boundaries that are under legal consideration. States can collect or calculate countywide data that would cover Tribal lands within a county, but a lack of authority precludes states from collecting anything beyond that on Tribal land. EPA should specify in the rule that only countywide data will be required to avoid double counting. Section 51.15(d)(9) proposes a way to eliminate potential double counting by stating that "...a State must either: (i) Include total activity input (inclusive of Indian country) when reporting nonpoint emissions; or (ii) For a State that includes counties overlapping Indian country for an Indian Tribe expected to report emissions as per § 51.1(b), the State must avoid double counting by excluding the activity within and emissions from Indian Country from the county total data reported." This indicates that states would not have the option to submit "total activity input" if they overlap with an "Indian Tribe expected to report". If so, both the proposed rule and preamble language specify that states are solely responsible for avoiding double counting and excluding activity data and the emissions from Indian Country. While the preamble encourages cooperation between jurisdictions, only one is responsible for the emissions split in the actual proposed rule. As the CAA provides EPA regulatory authority over both jurisdictions, it is not reasonable to require only one jurisdiction be fully responsible for the action or inaction of a separate jurisdiction it has no regulatory authority over. It seems more appropriate if EPA would act as the coordinator between the separate jurisdictions or give the state the option to report county-wide nonpoint emissions and then EPA could subtract the Indian Tribe reported emissions if EPA desires a jurisdictional split.

WESTAR requests clarification and correction of other issues created by this proposal for addressing emissions with multiple jurisdictions. There are some nonpoint sources for which states collect actual data rather than relying solely on countywide activity data. In some instances, such as oil and gas sources,

some states have a methodology that is more accurate than what is calculated using the activity data only. States only collect data for the portion of the county within their jurisdiction and not for Tribal lands. Because there would be two different methods of emissions calculation in a county that contains Tribal lands, there would be gaps or inconsistencies in the emissions data. WESTAR states request that EPA clarify how they intend to reconcile these inconsistencies that would arise in the data.

## Rx Fire Reporting

Under the current proposal states would be required to report non-federal prescribed fire activity data (acres burned) for prescribed fires affecting 50 acres or more and pile burns affecting 25 acres or more. Data would be day specific. There are too many non-federal prescribed fires in the west for states to compile and report daily prescribed fire emissions data. For those states that do collect emissions data for prescribed fires, the data is typically compiled at the end of the season. If this remains a part of the AERR, some western states would need to develop regulations and possibly even acquire statutory authority to collect this data. While some state air agencies may issue permits for non-federal prescribed fire, the permits may not require daily reporting. In some cases, state land management agencies are responsible for collecting information about the fire as it burns, but this information would only be for state land management, not including private land. Most prescribed burn permits only include general estimates of accomplishments from the land managers before the burn can begin. Few burners are measuring their piles to include the type of data EPA proposes to collect. The logistics and staffing for this requirement would be burdensome for all but the most well-resourced environmental agencies.

## Time and Resources

Throughout the proposal, EPA includes reporting and review deadlines shorter than those currently employed. In some cases, as in §51.20(a)(4 and 5), the reporting deadline will become shorter over time. While this proposal reduces the time allowed to QA/QC data, it also increases the number of sources that states and EPA must collect data from. Agencies are not currently staffed or funded to meet these proposed deadlines. As an example, one WESTAR member state has 76 Title V sources and an additional 229 Title V area sources reporting to them that pay fees (but do not need a permit) for a total of 305 major sources. Because fees are assessed for these sources, it is important to verify and have accurate data. The state staff and one summer intern typically spend 8 months completing QA/QC for these 305 sources. Without assistance from an intern, QA/QC requires an additional two months. EPA needs to reconcile the increased burden on already strained resources in states and the increase in cost to collect these data. Whether it is to QA/QC the data or to collect additionally required data, states will need more resources under this proposal.

For review of nonpoint source sector inputs, “EPA proposes to spread out requirements for submission of input data for EPA tools, including the option to review and accept EPA tool inputs. The EPA proposes to add regulatory text stating that the States would have no fewer than 30 days to review, comment, and/or provide revised tool inputs based on the information released by EPA, and that the EPA may allow a longer period for review source categories with more complicated input data or calculation approaches and would notify the States of this when the data are released.” While WESTAR supports EPA’s proposal to add flexibility to the 30-day review period, states will need more than 30 days to review and accept

EPA's default inputs for calculating nonpoint source sectors. Turnaround times for much of the review and reporting are too short. There is not enough time for states to verify whether EPA's default inputs are accurate or to fully compare them to state data. There are a lot of inputs to consider within each tool such as multiple fuels and different areas like industrial, commercial, and residential. WESTAR requests that with the proposed flexibility in review deadlines, EPA consult with states and consider their resources when determining appropriate review timelines. It is likely that the timelines will need to be significantly longer than 30 days. WESTAR also appreciates EPA's commitment to provide training for state agency staff that need help using and reviewing the tools.

Thank you for considering WESTAR's comments regarding proposed revisions to the Air Emissions Reporting Requirements rule. We appreciate EPA's commitment to improving emissions inventories in the West and the opportunity to comment on the proposed revisions to the AERR. We look forward to your responses.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Taylor". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kathy Taylor, Vice President  
Western States Air Resources Council