



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

November 17, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OAR-2004-0489
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

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

RE: Revisions to the Air Emissions Reporting Requirements, Docket ID No. EPA-HQ-OAR-2004-0489

Dear Administrator Regan,

On behalf of the New Mexico Environment Department (NMED), attached please find our comments in support of the subject rulemaking. As you will note in our comments, NMED's Air Quality Bureau has already taken several steps to implement and enhance its emissions inventories and welcomes U.S. EPA's efforts at the federal level.

As the U.S. EPA moves forward to finalizing these proposed rules, NMED stands ready to support your efforts and we welcome the opportunity to discuss our experiences with the Office of Air and Radiation, the Office of Environmental Justice and External Civil Rights, the Office of General Counsel, or any other office that may have an equity stake in the development and implementation of these proposed rules. As always, I look forward to further collaboration between the U.S. EPA and NMED in support of our shared mission of protecting human health and the environment.

Sincerely,

A handwritten signature in blue ink, appearing to read "James C. Kenney".

James C. Kenney
Cabinet Secretary

Attachment (1)

cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham

**New Mexico Environment Department
Comments to the U.S. Environmental Protection Agency
Revisions to the Air Emissions Reporting Requirements**

Comment 1: NMED Supports Mandatory Reporting Requirements and Lower Annual Reporting Thresholds for Criteria Air Pollutants (CAPs) and Hazardous Air Pollutants (HAPs) Emissions.

New Mexico supports the U.S. Environmental Protection Agency (EPA)'s efforts to expand the hazardous air pollutant (HAP) emissions reporting requirements through mandatory reporting of point sources. The New Mexico Environment Department (NMED) Air Quality Bureau (AQB) has consistently demonstrated its commitment to collecting and maintaining a detailed and comprehensive statewide emissions inventory. New Mexico's current emissions inventory criteria is more extensive and detailed than those of surrounding states. The inconsistency in reporting requirements can introduce uncertainty along state boundaries, further complicating modeling analyses. Standardized reporting requirements are critical in supporting modeling efforts and decision-making processes for programs such as the Regional Haze program and interstate transport programs. NMED AQB also supports EPA's proposal to lower emissions reporting thresholds for CAPs and precursors, as well as HAPs. Lower emissions reporting thresholds would be used each reporting period, as compared to the current policy utilizing less frequent but higher thresholds every two out of three years with a lower emissions threshold every third year (triennial level). NMED AQB agrees the more frequent, lower reporting threshold would equip regulatory agencies with more up-to-date information and evaluate owner/operators' efforts to reduce emissions.

In previous rulemakings, EPA considered but never finalized mandatory HAP reporting to collect emissions inventories. Several commenters, in response to the original Air Emissions Reporting Requirements (AERR) proposed rule in 2006, urged EPA to include a requirement for reporting HAP emissions data, both for Title V facilities and all emission sources. However, HAP reporting was not included in the AERR rule at that time, as EPA believed that a voluntary program along with the monitoring of the participation of State agencies in this effort should suffice. Despite having regulations for industrial facilities through the National Emission Standards for Hazardous Air Pollutants (NESHAP) and similar standards, these regulations do not typically require reporting of annual HAP emissions but rather compliance information like stack test results, which may not specifically target HAPs.

EPA recognizes the lack of annual HAP data, except when voluntarily reported or collected for the annual Toxic Release Inventory (TRI) purposes. Mandatory HAP reporting is now proposed because: (1) the monitoring results of the collection and reporting of HAP information from states demonstrate that the voluntary approach has not sufficiently provided EPA with the point source HAP data it needs; and (2) the Combined Air Emissions Reporting System (CAERS) is available to support centralized collection of detailed emissions data from facilities and to provide flexibility in reporting from either facilities or states.

EPA proposes mandatory HAPs emissions reporting from point sources, including all CAP and HAP major sources and certain non-major sources that emit at or above the proposed thresholds. To limit the burden, the HAP reporting requirements will stand separate from the CAP reporting requirements. In the meantime, this proposal maintains the current voluntary pollutant reporting by states and industry for additional facilities and/or additional HAPs for non-major sources and voluntary Greenhouse Gas (GHG) reporting by states. Key items from the proposal include:

- For CAP and HAP major sources, all HAPs should be reported.
- Non-major sources can include area sources and sources without specific source category designation. For non-major sources, certain HAPs would only be required to be reported when annual actual emissions exceed the proposed reporting threshold promulgated by the Agency (as listed in EPA's proposal, Table 1B to Appendix A of Subpart A).

In New Mexico, facilities authorized under Prevention of Significant Deterioration (PSD) and Title V permits report every year and from all minor sources every three years. In 2020, NMED conducted the first minor source emissions inventory which included sources that had never been reported to EPA previously. NMED AQB requires submission of emission inventories from sources having the potential to emit or with actual emissions of over 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM₁₀, PM_{2.5}, sulfur oxides, nitrogen oxides, carbon monoxide or volatile organic compounds (VOCs) per 20.2.73.300 New Mexico Administrative Code (NMAC). Any source defined as a major source of HAPs under 20.2.70 NMAC (Operating Permits) must submit an emissions report annually, including facilities that have Title V permits, New Source Review (NSR) permits and General Construction Permits, or Notice of Intent (NOI). These sources provide emissions inventories from approximately 150 major source facilities (including Title V facilities) and received inventories from over 7,000 minor source facilities. Beginning in 2023, the inventory will apply to all sources with air quality construction permits (20.2.72 NMAC or 20.2.74 NMAC), operating permits (20.2.70 NMAC), and NOIs (20.2.73.200 NMAC). This marks the second round of comprehensive data collection by NMED since 2020, and it will continue to include all major and minor sources, adhering to the triennial reporting cycle.

In summary, New Mexico supports EPA's proposal for mandatory air toxics reporting, as the state regulation (20.2.73.300 NMAC, Emission Inventory Requirements) has been mandating major sources of HAPs to submit an annual emissions report. EPA's proposal aligns with New Mexico's current efforts in HAP major source reporting and strengthens the reporting requirement for CAPs.

Comment 2: NMED Supports Adopting Earlier Reporting Deadlines and Reducing the Time in which States Must Collect Annual Emissions Inventories with Accommodations.

New Mexico agrees with EPA's proposal to phase in earlier reporting deadlines on the condition that EPA provides several accommodations to the states. Future state inventories will also need to interface with or use EPA's CAERS. Both approaches will require state resources for programming support, training, and additional personnel. NMED AQB hopes these concerns will be considered when establishing the final timeline and implementation of the centralized reporting system.

EPA is proposing a 15-day extension to the reporting deadline for point sources through the 2026 inventory year and a phase-in of earlier deadlines starting in the 2027 inventory year. This aims to ease state challenges in transitioning to CAERS-based reporting and enhance emissions data timeliness. The current deadline of December 31 of the year after the inventory year often falls during the holiday season causing delays. Many states begin submitting emissions data in December, leading to unresolved issues. By providing an unofficial grace period and earlier deadlines, EPA aims to align with other emissions inventory programs, reduce data lag, and support states in streamlining their reporting processes. The proposed changes include:

- Extend the deadline for point source reporting through the 2026 inventory year, setting it to January 15, which is 1 year and 15 days after the end of the inventory year.
- Implement phase-in of earlier point source deadlines:
 - For the 2027 through 2029 inventory years, states would report within 9 months of the end of the inventory year.
 - Starting with the 2030 inventory year and onwards, states would report within 5 months of the end of the inventory year, allowing for more current data collection.

New Mexico requires owners/operators to submit their emission report by April 1 of each year, as mandated by 20.2.73.300 NMAC; therefore, modification to Paragraph (7) of Subsection B within 20.2.73.300 NMAC would be required to accommodate the proposal. New Mexico hopes the earlier reporting deadlines would also mean final emissions data will be made available to the states sooner after the completion of an inventory. To conserve state resources, New Mexico encourages EPA to notify and work with the regulated community to ensure these earlier deadlines are feasible.

Comment 3: NMED Encourages EPA to Require Emissions Reporting from Upstream Oil and Gas Emissions.

Although not explicitly proposed in the AERR updates, New Mexico strongly encourages EPA to require emissions reporting from upstream oil and gas operations. As delineated in Comment 1, NMED has been collecting the minor source emissions inventory, which includes sources that have not previously been reported to EPA, since 2020. This inventory has revealed that collectively, minor upstream oil and gas sources significantly contribute to air pollution in the Permian and San Juan Basins. In contrast, EPA's current proposal encompasses only minor sources within specific sectors, including hazardous waste combustors, Portland cement manufacturers, mercury cell chlor-alkali plants, secondary lead smelters, carbon black production, chemical manufacturing (specifically chromium compounds), primary copper smelting, secondary copper smelting, nonferrous metals area sources (i.e., zinc, cadmium, & beryllium), glass manufacturing, electric arc furnace steelmaking facilities, and gold mine ore processing and production. These sectors are primarily related to certain HAPs, and the proposal includes only those sources within these sectors that emit HAPs above the proposed thresholds, which vary from minimal amounts for certain compounds, such as dioxins and PCBs, to up to 10 tons per year for other HAPs.

New Mexico's position is that actual emissions reported to EPA should include all minor and major point and non-point source emissions, particularly for the oil and gas sector. This is necessary to determine the number of minor sources and their emission impacts in the oil and gas basin where the basin is shared among states. The inventory should also include upstream sectors of the oil and gas industry where there are many small sources of emissions.

Comment 4: Proposed Requirements and Alternative Approaches for Reporting Prescribed Burning Activities.

New Mexico supports EPA's proposal for state, local, and certain Tribal entities to report prescribed fire data to better understand the health impacts from smoke, increase modeling capabilities, and inform future regulatory policy. NMED data collection on prescribed fires exceeds the requirements in EPA's proposal and is already collected and considered in the state inventory. The inclusion of data from Tribal agencies will be beneficial in addition to existing data. However, the proposal to collect daily data on prescribed burn acreage and fuel usage, although beneficial, would be difficult for NMED to obtain

directly, and therefore New Mexico encourages EPA to consider collecting data directly from relevant agencies or collecting the data at the end of each burn event.

The proposed revisions apply to “certain tribal entities.” The Federal Register notice provides that “Tribal governments are not affected, unless they have sought and obtained treatment in the same manner as a State under the Clean Air Act and Tribal Authority Rule and, on that basis, are authorized to implement and enforce the Air Emissions Reporting Requirements rule.” NMED does not speak on behalf of tribal governments and recommends that EPA consults directly with and strongly considers input from such impacted governments.

EPA is proposing a mandatory prescribed burn reporting program, requiring states to submit prescribed fire activities data on a daily basis. This applies to each broadcast and understory burn affecting 50 acres or more, as well as pile burns affecting 25 acres or more. The first implementation year for this program will be the 2026 inventory year. The main items of this reporting program include:

- A unique identifier for the State,
- The date of the burn,
- State and county code or Tribal code,
- The centroid of the latitude/longitude coordinates of the burn for that date,
- SCC (which provides the type of burn), and
- For broadcast /understory burns: either the acres burned or the total planned acres and percent burned;
- For pile burns: the number of hand piles per acre and the number of machine piles per acres.

EPA is also considering several alternatives in addition to the preferred requirements described above:

- Alternative M1: Covers all aspects of the preferred approach but starts reporting for the 2025 inventory year, with data due by July 1, 2026.
- Alternative M2: Covers all aspects of the preferred approach but suggests a delayed start for reporting, commencing with the 2027 inventory year, and the first data collection due on July 1, 2028. This adjustment allows states more time for effective implementation.
- Alternative M3: Instead of collecting data on a per-burn basis, M3 requires states to report only the counties, dates, and/or months when prescribed burns occurred. It incorporates satellite data alongside state-provided information. The first implementation year for this alternative is 2024. This simplifies reporting by excluding specific burn size or type details.

NMED's Smoke Management Program (SMP) plays a crucial role in ensuring the safe execution of prescribed burns. It applies to burners engaged in burning more than 10 acres per day or over 1,000 cubic feet of vegetative material per day in order to address emissions that might impact the state's air quality. The threshold of 10 acres/1,000 cubic feet is based on burn acreage and pile volume rather than emissions, aiming for simplicity in application, which is especially important for small landowners without extensive technical training. Types of NMED's prescribed burns that are applicable to this SMP include both wildland and agricultural lands, regardless of ownership or the purpose of the fire. Burners operating under the SMP are required to submit a completed tracking form within two weeks after completing a burn project or, if the project was not executed, a tracking form with zero values must be submitted by the end of the calendar year. This form captures essential information, including the total

acres or pile volume burned, breakdown by vegetation type, percent combustion, fuel loading, pile condition, and the use of Emission Reduction Techniques.

In addition to the SMP, the New Mexico Legislature introduced the Prescribed Burning Act in 2021, focusing primarily on enhancing safety during prescribed burns on private lands. This legislation establishes a negligence standard and offers a training program to ensure safer practices. It also reduces liability for trained and certified individuals from double damages to actual damages. While safety is the primary objective, this act indirectly contributes to improved emissions reporting during prescribed burns by encouraging safer and more controlled burning practices.

In summary, New Mexico has a robust system for collecting data on prescribed fires, exceeding the requirements outlined in EPA's proposal. This comprehensive data is thoughtfully integrated into our state's inventory, contributing to our overall understanding of prescribed fire emissions. The inclusion of data from Tribal agencies by U.S. EPA in emissions reporting will be a valuable addition to NMED's existing data, enhancing the overall understanding of prescribed fire emissions within the state. NMED's SMP and the Prescribed Burning Act demonstrate the state's commitment to both safety and emissions reporting during prescribed burns, providing a comprehensive framework to ensure that these activities are carried out responsibly and with environmental considerations in mind.

Comment 5: NMED Supports EPA's Proposal to Reduce HAP Reporting Requirements for Small Entities.

New Mexico expresses its support of EPA's proposal to accommodate small entities by allowing the submittal of aggregated data in the form of facility-wide emissions. NMED AQB's Small Business Environmental Assistance Program (SBEAP) is already in place to provide aid to small businesses throughout New Mexico, apart from those in Bernalillo County and Tribal Lands.

EPA's proposal offers owners/operators the choice to report facility-wide HAPs and incidental CAPs, instead of providing the detailed data generally required for larger sources. Several criteria must be met for owners/operators to receive the benefits of reduced reporting requirements, as summarized below:

- The facility meets the small entity definition outlined in the Clean Air Act, Section 507(c).
- The owner/operator has never received notification from EPA of a modeled cancer risk exceeding 20 individuals for every one million people, or if such notification was made less than 180 days before the next point source emissions reporting deadline.
- Estimates of emissions with the process-level detail that would otherwise be required by this proposed action are not required by a state.

New Mexico also supports the proposal to unify the definition of a small business entity, a move that promotes greater clarity and consistency in regulatory processes. NMED already aligns with this definition of a small entity. EPA is proposing a definition of small entity to be consistent with Clean Air Act, Section 507(c). This definition would limit small entities to those that meet all of the following criteria: (a) has 100 or fewer employees, (b) is a small business as defined in the Small Business Act (15 U.S.C. 631 et seq.), (c) is not a major source, (d) does not emit 50 tons or more per year of any regulated pollutant, and (e) emits less than 75 tons per year or less of all regulated pollutants.

NMED's SBEAP extends compliance assistance to small entities to help navigate the air quality regulatory framework, surpassing the scope outlined in EPA's proposal. The SBEAP staff can assist with filling out the essential documentation required for compliance. SBEAP staff assist the small entity, offering

calculations, requisite attachments for applications, guidance on public notices, and additional assistance in meeting reporting requisites for the AQB. This compliance assistance also includes compliance assessments, a service tailored for qualifying small businesses seeking to proactively meet their air quality permit obligations. The compliance assessment program empowers qualifying small entities to rectify any discrepancies prior to inspections, potentially mitigating or waiving penalties associated with violations. Furthermore, small entities are eligible for a 50% reduction in permit fees under SBEAP, provided they have a workforce comprising no more than 10 employees at any given point during the calendar year. These initiatives emphasize New Mexico's commitment to streamlining compliance and alleviating barriers for small businesses while upholding air quality standards.

Comment 6: NMED Supports Options Presented by EPA Regarding State Responsibilities in Annual Emissions Collection and Reporting.

New Mexico supports the implementation of EPA's CAERS to provide a streamlined reporting system with the capacity of receiving emissions inventories directly from industry. Currently, NMED AQB submits the annual emissions inventory electronically to EPA contained within the Consolidated Emissions Reporting Rule (CERR). With limited resources, NMED appreciates EPA's expanded role in both hosting emissions data and managing and performing quality control procedures to ensure excellent data quality.

EPA is proposing a combined option for states concerning the responsibilities of HAP reporting. Firstly, owners and operators of facilities, whether located on Tribal Land or within states, will be mandated to report facility inventory data and HAP emissions directly to EPA through CAERS. Secondly, this action offers the option for states to report HAP data to EPA on behalf of the owners and operators of facilities within the state.

By proposing CAERS as the reporting system for owners/operators of facilities, EPA also provides states with an option to determine the extent to which they are willing to undertake additional responsibilities. These options include:

- States may opt to participate voluntarily in review of HAP data provided by owners/operators to EPA rather than implement their own reporting requirements.
- States may alternatively choose to implement HAP reporting regulations that match (or go beyond) EPA's requirements.

This proposal does not eliminate the potential for duplicative reporting requirements for the owners/operators of facilities, as the use of CAERS by states is not mandatory. States would have the option to participate in CAERS to alleviate the duplicative reporting burden for owners/operators. If a state opts for owners/operators to continue reporting to a state system, and these facilities are also mandated to report HAPs to EPA through CAERS, duplication may occur.

Comment 7: NMED Supports Additional Reporting Requirements for Native American Lands and States with Counties with Overlapping Regulatory Jurisdictions.

New Mexico supports EPA's proposal requiring facilities operating on Tribal lands to report CAPs and HAPs emissions directly to EPA on an annual basis, if the facilities do not report to a tribe that has Treatment as a State status. The NMED AQB has authority over air quality in New Mexico apart from Bernalillo County (regulated by the City of Albuquerque) and Tribal lands (regulated by EPA Regions 6

and 9). This additional information on sources inside New Mexico's airshed would enhance modeling capabilities and future regulatory planning.

The proposed revisions apply to "certain tribal entities." The Federal Register notice provides that "Tribal governments are not affected, unless they have sought and obtained treatment in the same manner as a State under the Clean Air Act and Tribal Authority Rule and, on that basis, are authorized to implement and enforce the Air Emissions Reporting Requirements rule." NMED does not speak on behalf of tribal governments and recommends that EPA consults directly with and strongly considers input from such impacted governments.

NMED AQB further requests EPA provide additional clarification on the expectations of the states to ensure emission sources on Tribal lands are accounted for appropriately, with clearly defined jurisdictions and roles. Currently, nonpoint emissions data estimation involves multiplying county total activity data by emissions factors. However, when counties overlap with Tribal land, the tools do not automatically account for the portion within the different jurisdictions. This can lead to double counting when states report emissions with overlapping jurisdictions. Additionally, the current AERR lacks clarity regarding the exclusion of emissions on Tribal land, resulting in inconsistent state reporting practices. To address this issue, EPA is proposing to specify the situation in which a Tribal nation would be required to report directly to EPA to prevent double counting of non-point sources. A state with counties that overlap with Tribal land would avoid double counting by excluding the activity and/or emissions when a Tribal nation is expected to report emissions.

Comment 8: NMED's Comment on Estimating the Percentage of Minor Point Sources Classified as "Non-Major" in New Mexico for the Inventory.

Non-major sources are defined by EPA as stationary sources that do not meet the major source thresholds for criteria pollutants and HAPs. The major source threshold for any regulated air pollutant is typically 100 tons per year by default, except for non-attainment regions where major source thresholds may be lower. For HAPs, the major source thresholds are 10 tons per year for a single HAP or 25 tons per year for any combination of HAPs (USEPA). In 2023, only two regions have been identified as non-attainment areas for 8-hour ozone (at the marginal designation) and PM₁₀ (at the moderate designation) within Doña Ana County, New Mexico. According to EPA, the lower major source thresholds for non-attainment areas do not apply to PM₁₀ at marginal or moderate designations. Furthermore, the non-attainment areas threshold for ozone is not considered, as ozone data is unavailable from the facilities' reports.

New Mexico has approximately 3,170 facilities holding minor source permits. This determination is made by considering either a combined HAPs emissions level of less than 25 tons per year or having emissions below major source thresholds for specific air pollutants (carbon monoxide, nitrogen dioxide, sulfur dioxide, volatile organic compounds, fine particulate matter, and lead). In conclusion, a significant number of minor point sources in New Mexico would fall under the category of non-major sources for the inventory, indicating that a significant portion of these sources would be available for inclusion in future emissions inventories.