STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

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EPA Docket Center
EPA/DC
EPA West
Room B102
1301 Constitution Ave., NW
Washington D.C. 20460

Daniel Holic
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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
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Subject: Docket OECA-2004-0024
EPA ICR No. 0107.08; OMB Number 2060-0096

Dear Mr. Holic:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA's) June 1, 2004 Source Compliance and State Action Reporting for Stationary Sources of Air Pollution Information Collection Request (ICR) (69 *Federal Register* 30897). STAPPA and ALAPCO fully support the right of the public to access data relating to public health, including information on compliance of the regulated community with the provisions of the Clean Air Act. The associations also support EPA's role of overseeing effective implementation of the Act by collecting accurate compliance information having practical utility.

The purpose of the ICR is to seek comment on adding certain reporting requirements to the compliance information currently required to be provided by state and local agencies to the Air Facility System (AFS), previously known as the Aerometric

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Information Retrieval System Facility Subsystem (AIRS). Specifically, EPA has proposed adding the following reporting requirements:

- Subpart Identifier in the Air Program record for Maximum Achievable Control Technology (MACT), New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP);
- Reporting of Partial Compliance Evaluations (PCEs) and the addition of the pollutant value to stack test actions;
- Reporting of Permit Program Data Elements (Date Permit Issued, Permit Number, Category);
- Identification of High Priority Violator (HPV) "Violation Discovered" date/activity;
- HPV Violation Type Code and Violating Pollutants; and
- Inputting data every 30 days rather than the currently required every 90 days

Before addressing these new requirements, STAPPA and ALAPCO express disappointment and concern that EPA wishes to add data reporting requirements to AFS rather than focusing on replacement of the antiquated and inflexible system itself. EPA points out in the ICR Notice that the Clean Water Act and RCRA programs and their databases "have sophisticated reporting and tracking" of certain data elements. The AFS system, however, is neither sophisticated nor efficient. Rather, AFS is an archaic computer system equipped with a difficult-to-access interface. Some states have found that it is subject to frequent and prolonged breakdowns. Reporting air compliance data would be far less resource-intensive and problematic for EPA and the state and local agencies if EPA were to develop and deploy a modern database. The associations note as well that EPA's estimate of the total annualized cost burden for compliance with the previously approved ICR was $2,669,186 according to the June 1, 2004 *Federal Register* notice. Some of this amount – approximately $8 million in 3 years – could have been spent on designing and implementing ICIS, the system intended to replace the AFS system.

Moreover, we believe that the cost of complying with some or all of these requirements will be extremely challenging. Because no federal funding is available, the burden of compliance must be absorbed by the state and local agencies. In many cases, fees for Title V sources have already been maximized. In fact, some states have increased their Title V fees significantly recently in order to balance their budgets, making it highly unlikely that fees will be raised again soon. This situation should be recognized in EPA's estimation of the burden of compliance with the final reporting requirements.

Turning to the specific ICR proposals, first, the associations appreciate that the addition of the subpart identifier might be useful compliance information. STAPPA and ALAPCO do not object to this requirement. Nonetheless, the associations emphasize that burden estimates attributable to this activity must take into account the time spent reviewing the file and determining the correct subparts for a facility rather than just the time spent inputting the identifier. Moreover, states that use their own data systems will

need to modify the structure of their databases to add this information to AFS. We encourage EPA to phase in this data requirement gradually to allow time for such adjustments.

Second, STAPPA and ALAPCO continue to oppose the blanket inclusion of Partial Compliance Evaluations (PCEs) in the AFS system for the following reasons:

Data entry of PCEs into AFS constitutes a tremendous resource burden on State and local agencies, which simply do not have the personnel available for entry of what is typically a multitude of PCE activities. Data input for PCEs would require, for example, entries for initial file reviews for timeliness of submission as well as subsequent reviews for substantive compliance; entry of breakdown investigations; complaint investigations; NOV follow-up inspections; periodic monitoring reports; receipt and review of leak detection results; and numerous other entries for other PCE compliance activities. One state compiled a list of 19 such categories that would be mandatory for entry into AFS as PCEs if this requirement were finalized. This list of 19 PCE categories is not complete, and thus, does not fully reflect the total potential burden associated with mandatory entry of all PCE data.

Moreover, it is our opinion that data entry of PCEs is wasteful and duplicative. First, entry of Full Compliance Evaluation (FCE) information can sufficiently depict compliance activities regarding initial reviews of reports and related matters. Many state and local agencies perform initial reviews of required submissions for timeliness and completeness that are included later in the FCEs. In addition, some state and local agencies already make available to the public data and summary reports that are available on their own tracking and web site systems. In these cases, PCEs would constitute yet another layer of duplication.

Because PCEs have not been defined, STAPPA and ALAPCO believe that their entry into AFS would result in nationally inconsistent interpretations of what constitutes a PCE and data that could not be meaningfully compared among states and localities. For instance, one state might break out as two PCEs the determination that a facility information submittal was timely and, as a second determination, that the source submitting the information was in compliance. Another state, however, might treat the submittal as one PCE only. Such inconsistency, multiplied by the numerous PCE categories possible, would make it impossible for EPA and the public to arrive at accurate, nationally comparable, conclusions about PCE activities.

The associations are also concerned that PCE reporting might in some cases compromise or jeopardize ongoing enforcement investigations or other action, alerting a facility prematurely to a pending action or negotiating position.

Finally, STAPPA and ALAPCO are convinced that the burden on the State and local agencies of identifying, defining, and inputting PCEs in AFS simply cannot be justified by the incremental benefit to EPA of having such data. PCE reporting requirements have insufficient practical utility to merit the imposition of this unfunded,

undefined, and time-consuming requirement. To paraphrase one state, it is difficult to see what benefit EPA and the public would receive from the dissemination of pieces of information that are meaningless absent any context. State and local agencies should not be required to input crushing amounts of data in furtherance of vaguely defined goals.

Even assuming that the general goals articulated in the ICR by EPA are, in fact, valuable to achieve, STAPPA and ALAPCO doubt strongly that the data entry requirements in question would enable EPA to meet these goals. The ICR states that PCE reporting is "essential to adequately portray the range of compliance monitoring activities conducted by States and locals; manage a national program; improve data accuracy, providing the public with a more accurate and complete assessment of compliance status." Rather, mandatory PCE reporting would result in an inconsistent muddle of data termed "PCEs" but diverging in meaning one from another. Data accuracy would not be affected one way or another, although intuitively it would seem more probable that more mistakes in entry would be made due to the greatly increased data entry burden into the same inadequate system. And, while members of the public might in some instances be better able to assess compliance activities, for the most part they would lack the context necessary to understand the discreet building blocks of data that ultimately constitute an FCE – a more comprehensible and complete information offering.

In sum, STAPPA and ALAPCO advocate strongly that PCE reporting be maintained as an optional – not mandatory – reporting activity. Those state and local agencies that have voluntarily undertaken PCE reporting to meet their own needs may continue to do so. STAPPA and ALAPCO believe, however, that state and local agencies that have not made this choice should not now be forced to assume this reporting burden for the reasons set forth above.

Third, the associations do not oppose the entry of the pollutant value into stack test actions. Nonetheless, EPA should appreciate that, like entry of the subpart identifier and other seemingly "minor" requirements, the burden must include the time spent actually locating the pollutant within the report, which is generally more time consumptive than keying in the data. Moreover, the aggregate, cumulative impact on program resources of this data requirement, together with that for date of permit issuance, and HPV-related data should be viewed realistically by EPA as constituting new and burdensome activities – not dismissed with inadequate estimates of the time involved for compliance.

Fourth, although STAPPA and ALAPCO do not oppose entering the Title V permit issuance date into the AFS system, time should be allowed to enable state and local programmers to alter compliance databases so that the permit data can be uploaded to AFS. The associations note further that it is our understanding that EPA already has the permit issuance dates for both Title V and FESOP/SM facilities, which is submitted to the EPA regions by the state and local agencies. Therefore, there seems to be no need for duplication of what is already available.

Fifth, STAPPA and ALAPCO do not oppose entering the "Day Zero" date into the AFS system but oppose entering the discovery date, as this can be extrapolated from the day zero. The organizations oppose providing the violation type code and violating pollutants. Entry of the code and pollutants, although not seemingly excessively burdensome, must be seen in the context of all reporting requirements. When such apparently small burdens are multiplied by the numbers of violations for which one state or locality is responsible, the time and cost simply cannot justify the possible utility of such reporting.

Sixth, STAPPA and ALAPCO oppose shortening the time standard for reporting from 90 to 30 days. Although in an ideally automated world, data compliance would more closely reflect "real-time" compliance status, the state and local agencies – as well as the AFS system – are as yet nowhere near that level of computer proficiency. Many states enter data into the state computer system as inspections or stack test reports and other activities are completed, and periodically upload, the related data into AFS. This effort takes several days. Although individual members of STAPPA and ALAPCO are submitting their own burden estimates concerning the ICR to EPA, the estimates with which we are familiar indicate that EPA's estimate of 586 hours for reporting activities associated with the ICR for states having more than 500 major sources is significantly off the mark. In one state, for example, which has 800 Title V and 500 synthetic minor sources above 80%, 6000 hours is needed for state compliance data purposes relating to CMS and AFS reporting. Reporting on a monthly, rather than quarterly basis would require a staggering increase in resources for the state and local agencies. The burden increase for this data entry change has, the associations believe, been seriously underestimated. STAPPA and ALAPCO oppose this resource-draining proposal.

Our final point pertains to certain aspects within the Compliance Monitoring Strategy that addresses the automatic flagging of a facility as being in “unknown” compliance status if a full compliance evaluation is not completed within the recommended minimum evaluation frequencies. Although this point is not part of the formal ICR, STAPPA and ALAPCO encourage the U.S. EPA to remedy inadvertent and unintended consequences associated with present activity reporting practices. As you know, state and local air agencies are required under the terms of the CMS policy guidance to prepare, submit, and follow plans that provide for FCEs of all Title V major facilities on an every two-year basis, and on an every five-year basis for certain facilities designated as “synthetic minors”. As you also know, current practice is to report compliance activity data to the AFS computer system on a quarterly basis. The associated lag time between the completion of various compliance determination activities and the data actually being entered into the AFS system is typically 90 days. For those facilities which the plan provides for the FCE to be conducted in the final quarter of the overall plan, the “unknown” flag automatically goes up before the data can be entered into the AFS system. The end result is that some facilities are being inappropriately flagged as being in “unknown” compliance status when, in truth, compliance evaluations have been made and the compliance status of the source is known. The unintended consequence is that users of the system data falsely believe that

the FCE for facilities flagged as "unknown" has not been completed when it in fact it likely has been completed.

Another unintended consequence of the present CMS policy guidance pertains to a lack of flexibility in preparation of subsequent FCE plans after the initial plan has been fulfilled. Our members have determined that subsequent plans must conform very closely to the initial plan so as to satisfy the recommendation of completing an FCE on a two-year frequency. In other words, a facility for which an FCE is completed in quarter no. 2 of year no. 1 of the CMS plan must also receive an FCE in quarter no. 2 of year no. 1 of the subsequent CMS plan(s). The only permissible deviation is to "move forward" and complete the FCE in an earlier quarter of the planning cycle. But, moving one or more FCEs forward creates the unintended consequence of ratcheting down on the otherwise full two-year FCE frequency authorized by the policy guidance in subsequent planning cycles.

Although STAPPA and ALAPCO are not prepared to offer specific recommendations at this point to remedy these issues, our members will continue to confer with EPA as we work together to develop mutually acceptable solutions.

Thank you for this opportunity to comment on the ICR. We look forward to working with you and to continued discussions on the reporting requirements in issue. Please do not hesitate to contact one of us or Mary Stewart Douglas should you wish to discuss any of the matters raised by the state and local agencies in this letter.

Sincerely,

Felicia Robinson
Co-Chair STAPPA

Curtis Marshall
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