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**Via E-Mail and First-Class Mail  
and Electronic Submission to [www.regulations.gov](http://www.regulations.gov)**

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue  
Washington, DC 20460

**Re: Request of the Utility Air Regulatory Group for Re-proposal or, in the Alternative, an Extension of the Public Comment Period of the “National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule,” Docket No. EPA-HQ-OAR-2011-0044**

Dear Administrator Jackson:

The Utility Air Regulatory Group (“UARG”)<sup>1</sup> intends to file comments in the above-referenced rulemaking docket on EPA’s proposed national emission standards for hazardous air pollutant (“HAP”) emissions from coal- and oil-fired electric utility steam generating units (“EGUs”) as published on May 3, 2011 (the “EGU MACT Rule”). 76 Fed. Reg. 24,976. EPA provided a 60-day public comment period on the proposed rule, requiring comments to be submitted by July 5, 2011. As discussed below, UARG is requesting that EPA withdraw the rule and re-propose it because critical parts of that proposed rule are based upon numerous and significant errors in EPA’s technical analyses of HAP emissions data, including -- but not

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<sup>1</sup> UARG is a voluntary, not-for-profit group of electric utilities, other electric generating companies, and national trade associations. UARG’s purpose is to participate on behalf of its members collectively in EPA’s rulemakings under the Clean Air Act and other proceedings that affect the interests of electric generators and in related litigation.

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limited to -- a widespread error involving EPA's proposed new and existing source MACT limits for mercury. Alternatively, if EPA believes that all such errors can be identified and addressed within the next 60 days, then UARG asks that the public comment period be extended by an additional 60 days beyond the time that significant errors are addressed -- *i.e.*, to September 6, 2011 -- to allow interested parties time to provide meaningful comments on this lengthy and important proposal.

### **Background**

The EGU MACT Rule is one of the most far-reaching and expensive rules EPA has ever proposed under the Clean Air Act. In preparing for this rulemaking, EPA issued an information collection request ("ICR") of unprecedented size and scope for any § 112 rulemaking. All EGUs were asked to provide extensive historic information on HAP emissions and many units were also required to conduct more than \$100 million of stack sampling for emissions of HAPs and possible HAP surrogates. The proposal that EPA just published in the Federal Register is 171 pages long and includes new MACT and NSPS limits and compliance requirements for coal- and oil-fired EGUs as well as an extensive new interpretation and justification for EPA's regulatory finding under § 112(n)(1)(A). Also part of the rulemaking docket -- and containing information on which UARG must comment -- are 19 technical support documents and a more than 500-page Regulatory Impact Analysis.

In previously filed comments, UARG expressed serious concerns that EPA was giving itself inadequate time to review and analyze this large body of information. UARG also worried that the rulemaking schedule would unfairly truncate interested parties' time to comment on the proposed rule. UARG concerns have been proven justified by the proposed rule.

### **Critical and Widespread Errors in the Proposal**

In the limited time that UARG has had to review the extensive amounts of information in the rulemaking docket, UARG has identified several errors that warrant withdrawal of the current proposal, re-analysis of the data, and re-proposal once the errors have been addressed. The following is a summary of the most egregious errors that UARG has identified to date. Further analysis is likely to uncover other errors as well.

The most widespread error UARG has found thus far concerns the proposed MACT standards for mercury -- the pollutant long-cited by EPA as being the HAP of the greatest health concern. Those proposed standards are fatally flawed because of an error EPA used to convert historical emissions data to common emission units. Specifically, the conversion factor EPA used to convert measurements reported in terms of lb/GWh to lb/MWh is incorrect by a factor of 1000. As a result, the emissions of the unit chosen as the single best

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performing mercury source are actually 1000 times higher than those EPA assumed in setting the new source MACT limit for mercury. This conversion error also pervades EPA's mercury MACT floor analysis for existing units. At least half of the 40 units identified as "best performing" have actual emissions 1000 times higher than EPA used in its MACT floor analysis. Furthermore, the conversion error draws into question EPA's decision to base its mercury MACT floor calculations on 40 units (the top 12% of all units for which EPA has data) instead of 130 (the top 12% of all units in the category). UARG believes that had EPA done the mercury MACT floor analysis correctly it would have concluded that the plants sampled during the Part III of the ICR were, in fact, the best performing units for mercury emissions.

Parties interested in commenting on the proposed mercury MACT limits face an impossible task because the proposed mercury standards are obviously wrong and parties have no way of knowing what standards EPA would have proposed had it used the emissions information correctly. Indeed, this error means that EPA's rulemaking proposal failed to comply with the rulemaking requirements of § 307(d)(3) of the Clean Air Act.

EPA's haste in issuing a proposed rule is also revealed in several other MACT limits. For example, EPA's proposed mercury limit for existing units designed to burn coal >8,300 BTU/hr is  $1.0 \text{ lb}/10^{12} \text{ BTU}$  or  $0.008 \text{ lb/GWh}$ . Table 2 to Subpart UUUUU of Part 63. The required heat rate to convert from the proposed input limit to the proposed output limit is 8,000 BTU/KWh, which is unrealistically low value for a coal-fired power plant. Similar heat rate errors exist in MACT calculations for all HAP groupings for IGCC, liquid oil and petroleum coke units. In addition, transcription errors, data assignment errors and a lack of outlier quality control are all present in the spreadsheets used by EPA to calculate the MACT floors.

UARG is also concerned that significant errors were made in the risk calculations reported by EPA in an attempt to support its appropriate and necessary finding. EPA has only recently made available information about some of its modeling assumptions, so UARG has not yet been able to identify specific errors.

### **Relief Requested**

The above-listed errors alone should prompt EPA to withdraw its proposed rule, redo its analyses, and re-propose corrected MACT limits. UARG requests that EPA do just that.

Even if such pervasive errors did not exist, however, a longer comment period would be warranted by the length and complexity of EPA's published rulemaking proposal. As noted above, the proposal is 171 pages long and includes new MACT and NSPS limits and

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compliance requirements for coal- and oil-fired EGUs and an extensive new interpretation and justification for EPA's regulatory finding under § 112(n)(1)(A). But the lengthy proposal is not all that UARG and other interested parties must review and understand in order to prepare meaningful comments. EPA has placed 19 technical support documents and a more than 500-page Regulatory Impact Analysis in the rulemaking docket. In addition, UARG plans to conduct its own review of the ICR data given the rushed review EPA appears to have given to these data. For all these reasons, more time is needed to prepare comments on the proposed rule.

In other recent rulemakings that have affected the utility industry, EPA has provided much longer comment periods. For example, the comment period in the proposed Coal Combustion Residuals rule, which covered 138 Federal Register pages, was 120 days. The comment period in the § 316(b) rulemaking (114 Federal Register pages) is 90 days and the comment period on the industrial boiler MACT rule (67 Federal Register pages) was 80 days.

The fact that EPA is under a court-ordered schedule to promulgate this rule does not prevent the Agency from assuring its rule is factually correct and scientifically sound and that interested parties are given adequate time to prepare meaningful comments. Last year, UARG challenged the consent decree for the EGU MACT Rule arguing that more time was needed to propose the rule and that at least four months should be provided for public comment. *See* Memorandum Opinion, *American Nurses Assoc. v. Lisa Jackson*, Civil Action No. 08-2198 (RMC) p. 2 (April 15, 2010). While Judge Collyer granted EPA's Motion to Enter Consent Decree, she specifically noted: "The Court appreciates industry's concern that this schedule may be too hasty for the critical and expensive regulatory decisions that will be made; however, the proposed Consent Decree allows for a change of schedule if need be." *Id.* at 3. She further offered "[i]f the science and analysis require more time, EPA can obtain it," *id.*, and she added "[i]f EPA needs more time to get it right, it can seek more time." *Id.* at 4. EPA should take Judge Collyer up on her offer and seek more time to correct the proposed rule and to provide the public sufficient time to comment on this important rule.

UARG therefore respectfully requests that EPA withdraw the proposed rule so it can correct the obvious errors in its proposed MACT floors. Alternatively, if EPA believes that all such errors can be identified and addressed within the next 60 days, then UARG asks that the public comment period be extended by an additional 60 days beyond the time that significant errors are addressed -- *i.e.*, to September 6, 2011 -- to allow interested parties time to provide meaningful comments on the revised limits and supporting analyses and upon the remainder of this lengthy and important proposal.

Thank you, in advance, for your consideration of this request. Please do not hesitate to contact me, or have your staff contact me, if you or they would like to discuss this request.

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UARG looks forward to hearing from you soon and participating in this important proceeding.

Sincerely,



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