September 4, 2026

By e-mail: szabo.aaron@epa.gov

Aaron Szabo, Assistant Administrator
Office of Air and Radiation
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Acid Rain Program and "Islanded" Power Generation Facilities

Dear Mr. Szabo:

We are writing regarding the EPA memorandum dated July 16, 2026 about the Acid Rain Program (also "ARP") under the Clean Air Act and regulation of so-called "islanded" power generation facilities ("Memorandum"). The Memorandum refers to definitions under the Code of Federal Regulations and Department of Energy Form 860 (1990 edition) ("Form 860") and concludes: "EPA believes that, considering the plain text of these definitions, the ARP does not apply to power generation facilities that are not connected in any way to the larger electricity grid." Letter at 2. According to the Memorandum (at 1), "[s]everal companies and states" contacted EPA asking for "clarity" on these regulatory provisions. EPA does not identify these companies and states, or include copies of their requests.

The Acid Rain Program began as a central component of the Clean Air Act Amendments of 1990. By 2023, sulfur dioxide (SO2) emissions were 96% below 1995 levels, due to the acid rain program and other power sector regulatory programs.[1] EPA confirms the significant improvements in lake and stream health since 1990.[2] Now, despite this progress, EPA would exempt "islanded" power generation from acid rain requirements.

As described in the Memorandum, EPA regulations implementing the Acid Rain Program define a "utility" as any person that sells electricity, and a "generator" as a "device that produces

[1] EPA, Power Sector Program Progress Report, 2023, available at https://storymaps.arcgis.com/stories/261a57422a5449c48d47f3c96677e0b3 (last visited Sept. 3, 2026).
[2] EPA, Progress Report—Ecosystem Response, available at https://www.epa.gov/power-sector/progress-report-ecosystem-response#ecosystemhealth (last visited Sept. 3, 2026).

electricity and was or would have been required to be reported as a generating unit pursuant to the U.S. Department of Energy [DOE] Form 860 (1990 edition)."[3]

However, the Memorandum then overreaches in significant ways. First, it wrongly attempts to apply the definition of "electric utility" from Form 860 to the Acid Rain Program. The Clean Air Act and its acid rain regulations incorporate the definition of "generator" that appears in Form 860, but not "electric utility" or any other term from Form 860.[4]

Moreover, the definition of "electric utility" in Form 860 is distinct from the Acid Rain Program's definition of "utility", noted above. Form 860 defines "electric utility" as follows:

> **"For the purpose of this report**, an electric utility is a corporation, person, agency, authority, or other legal entity or instrumentality that owns and/or operates facilities within the United States for the generation, transmission, distribution, or sale of electric energy primarily for use by the public".

Form 860 at i (emphasis added). Thus, Form 860 defines "electric utility" only for the purposes of Form 860 ("this report"), and does not redefine "electric utility" for purposes of the Acid Rain Program, which provides its own definition of a "utility" as any person that sells electricity. 40 C.F.R. § 72.2. Further, while EPA attempts by the Memorandum to limit those who must report under Form 860, the acid rain regulations incorporate the broad definition of "generating unit" from Form 860: "Any combination of physically connected· generators, reactors, combustors, turbines, and other prime movers operated together to produce electric power." This broad definition is consistent with the acid rain regulations' inclusive definition of "electric utility".

Thus, EPA has no basis in the Clean Air Act, its own regulations, or Form 860 to exempt "islanded" power plants from the acid rain requirements to which they are subject. The Memorandum (at 1) offers as an example "a planned power generation facility, consisting of approximately 500 megawatts (MW) of simple cycle natural gas-fired combustion turbines and reciprocating engines to exclusively power an adjacent, third-party owned data center." For the reasons in this letter, this facility, and any others, would not qualify for an exemption from acid rain requirements, as there is no such exemption.[5]

Pollution from gas turbines has impacts whether the sources are islanded, partially-front-of-the-meter and partially behind-the meter, or fully grid-serving. There is no basis in

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[3] 40 C.F.R. § 72.2; see also 42 U.S.C. § 7651a(9).
[4] 40 C.F.R. § 72.2; 42 U.S.C. § 7651a(9).
[5] Further, the "adjacent" facilities would meet EPA's own test for a "support facility" for the data center, for purposes of new source review aggregation: "Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code." 45 Fed. Reg. 52,676, 52,695.

science or law for this exemption. We therefore respectfully request that EPA withdraw the Memorandum and instead affirm that “islanded” power plants are not exempt from the applicable statutory and regulatory acid rain requirements.

Sincerely,

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