

'Mobile' Sources For On-Site Generation May Be A Risky Bet

By **Brendan Collins and Lorene Boudreau** (May 15, 2026, 4:04 PM EDT)

On March 31, addressing state environmental regulators at the Environmental Council of the States' spring meeting, the U.S. Environmental Protection Agency's air chief, Aaron Szabo, confirmed that the EPA is considering a new policy that would treat large on-site generators used at data centers — such as combustion turbines and diesel generators — as mobile rather than stationary sources under the Clean Air Act.

While this distinction may sound esoteric, such a change could substantially reduce the preconstruction and operating permit obligations that typically apply to power generation facilities, accelerating data center buildouts while narrowing opportunities for state oversight and public participation regarding air pollution.

But such a significant policy change will take time and certainly face litigation challenges, leaving developers that adopt the expedient solution at risk of regulatory reversals that may occur before a new data center comes online, or before a more permanent power source can be obtained.

The significant energy needs of data centers are no secret. The appetites of these facilities have contributed to increased stress on the country's energy infrastructure and reversal of decades of decline in the demand curve, leading to rising electricity prices and unwanted attention from utility regulators and the public at large.

The urgent need for new generation has been stymied by a calcified system for power plant permitting and grid interconnection, among other challenges.

Data center developers have been forced to search for creative solutions to supply power to a rapidly growing sector, and in many cases have turned to stationary combustion turbines and stationary engines to supply power indefinitely until more permanent generation sources come online.

In its effort to promote data center development, the Trump administration is considering unprecedented changes to the regulatory treatment of these stop-gap power supplies that could have far-ranging impacts on both grid demand and the ability of states to regulate air emissions within their borders.

Clean Air Act Structure

The Clean Air Act divides sources of air emissions into two main categories: stationary sources and mobile sources. Under Titles I and V of the act, stationary sources, particularly those that qualify as major sources of emissions, must obtain permits prior to construction and operation.

Under the New Source Review program, a source is defined as "major" if it emits, or has the potential to emit, regulated pollutants, including ozone-creating oxides of nitrogen, or NO_x, at a rate equal to or greater than 250 tons per year. But in states with persistent ozone pollution, sources emitting over 100 tons per year, or even less, are subject to more stringent regulation.



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These permits assess the air quality impacts of new facilities and impose emissions limits, performance standards and control technology requirements intended to prevent new emissions from worsening air quality.

The act does not preempt state law regulation of stationary sources, and states can choose to regulate stationary sources within their borders more strictly than the EPA requires.

Stationary sources are also subject to aggregation when colocated, so that if several smaller sources collectively exceed the major threshold, the facility will be regulated as a major facility. This aggregation rule prevents facility owners from avoiding permitting or emission control requirements applicable to major facilities by deploying multiple smaller, and presumptively less efficient, sources.

Combustion turbines and other generators have historically been treated as stationary sources subject to aggregation and, when warranted, treatment as part of a major source requiring federal and state construction and operating permits.

Under Title II of the act, mobile sources are treated very differently, in a regulatory system designed primarily for motor vehicles. The EPA prescribes performance criteria for each class of mobile source, but the sources may be deployed anywhere in the U.S. by their owners without requiring a facility-specific permit.

A mobile source does not require a permit to construct or operate, and so is not subject to the aggregation rules that apply to stationary sources. The mobile source merely needs to meet the EPA's performance standards. Further, with certain limited exceptions, mobile sources are not subject to more stringent state-level regulation.

What the EPA Has Already Done

The EPA laid some of the groundwork for treating combustion turbines as mobile sources when it revised the New Source Performance Standards for combustion turbines earlier this year. There, the agency created less stringent NO_x standards for a new subcategory of temporary combustion turbines.

Temporary turbines are subject to a NO_x emissions limit of 25 parts per million, compared to the much more stringent limit of 9 ppm for new large gas turbines that do not fall into this subcategory.

The higher limit does not require temporary combustion turbines to be outfitted with selective catalytic reduction, a common and effective air emissions control technology. A turbine is defined as "temporary" if it operates at a location for no more than 24 months.

The Clean Air Act's mobile source regulations generally apply to motor vehicles such as passenger cars, trucks and motorcycles, as well as trains, airplanes, construction equipment and what are called "nonroad engines." To be regulated as a nonroad engine, a source must be "portable or transportable."

Indicia of transportability include wheels, skids, carrying handles, dollies, trailers or platforms. In addition, the engine must not be subject to any NSPS, which only apply to stationary sources.

In the 2026 NSPS for combustion turbines, the EPA recognized: "Under both the statute and EPA regulations, combustion turbines in general are considered a kind of internal combustion engine that therefore could in theory be regulated as nonroad engines."

But because they meet the applicability criteria of the NSPS, they are excluded from the definition of nonroad engines. EPA noted that "the kinds of turbines that are used in stationary temporary applications are not currently subject to any title II regulations or standards," so exempting them from the NSPS could leave them unregulated altogether.

To streamline permitting while avoiding a gap in regulation, as a stepping stone, the EPA excluded from the 2026 NSPS portable combustion turbines that meet the definition of "nonroad engine" and are certified to meet emission standards promulgated pursuant to Title II.

The agency explained that this conditional exclusion will become operative in the future if the EPA adopts nonroad emission standards for portable combustion turbines. And it is reported to be doing exactly that.

The conditional exclusion means that the EPA should not have to revise the NSPS to exclude portable combustion turbines once the Title II regulations are in place.

What This Would Mean for Developers

If regulated under Title II as a mobile source, these on-site power sources would not be subject to Clean Air Act permitting requirements. Only the manufacturer of the engine has compliance obligations under Title II.

For that reason, the EPA acknowledges the "benefits in the form of reduced permitting burden and further streamlined compliance obligations for the purchasers and users of such turbines" if they were to qualify as nonroad engines.

Once the EPA declares these sources to be mobile rather than stationary, these sources could become the default approach for on-site power generation at data centers. For developers, project timelines could accelerate significantly once the need for a multiyear New Source Review process is eliminated.

Developers will be able to essentially outsource Clean Air Act compliance obligations, because they will no longer be required to obtain preconstruction and operating permits for their turbines. Instead, the manufacturer of the equipment will be providing warranties that their turbines comply with Title II requirements.

Users and purchasers should also be comforted knowing that the sale of engines that do not comply with Title II is prohibited. And for the ultimate operators of the data center, there is no ongoing permit renewal obligation, and there may be no other ongoing compliance obligation beyond performing manufacturer-recommended maintenance.

There is an important caveat. If the EPA adopts this change, there will almost certainly be litigation, and courts have been skeptical of radical departures from long-standing statutory interpretations by the EPA in particular.

Developers that rely on the agency's 24-month authorization under the 2026 NSPS face an uncertain outcome. The EPA may not succeed in recharacterizing these turbines as mobile sources, grid-connected supplies may not materialize and the facility may not qualify for an operating permit due to the more stringent emission requirements that would apply to a major facility.

Data center developers need to plan for all of these contingencies, recognizing that on-site turbines might provide power only for the first 24 months of a facility's life.

Implications for States and the Public

Some data centers are already using truck-mounted gas turbines to supply power. These mobile turbines can be installed and operational in a matter of hours.

When numbered in the dozens, the turbines can have a generating capacity equivalent to a small power plant and exceed the major source emission thresholds. By allowing combustion turbines that have historically been regulated under Titles I and V to fit under Title II and thus avoid aggregation and the permitting mandates for stationary sources, the EPA would be reducing procedural touchpoints that exist in stationary-source permitting, including notice-and-comment and permit appeals.

Air permits are subject to public review and comment before they are issued, and final permits can be challenged by interested parties. Thus, removing the permitting requirement for these turbines would limit the opportunities for opposition by the general public.

The role of states would also be more limited. In general, states other than California cannot adopt mobile source standards, and the EPA is challenging even California's explicit statutory authority to

get waivers for more strict standards. Other states can only choose between the federal standards and any authorized California standards.

Because these temporary power sources have not been previously classified as mobile sources, California has not yet attempted to develop its own standards. California does maintain more strict standards for stationary combustion turbines, but it would likely take years for California to adopt new mobile source standards, and the current EPA can be expected to oppose any waiver request.

The reclassification of combustion turbines as mobile sources would open a window of great regulatory uncertainty for several years. For this reason alone, EPA action to reclassify these turbines as mobile sources would presumably encounter strong opposition from environmental groups, which have already sued the agency over the 2026 NSPS.

Implications for Electricity Demand on the Grid

There is no single factor affecting electricity demand projections that compares to the anticipated demand from data centers. The siting of a single hyperscaler facility can affect not only demand but transmission planning, capacity pricing and, eventually, retail power prices.

Electric utilities and independent power producers must take careful account of planned data center construction and incorporate projections into their long-term capital investment decision-making — and they do. If data centers that have been factored into those investment decisions pivot unexpectedly to newly "mobile" on-site turbines, the anticipated transmission and generation revenue from those data centers must be reconsidered.

This issue is even more direct for generation developers planning co-located power plants that would dedicate some capacity for data center load while selling surplus power to the grid. These developers would be subject to full stationary source permitting and capital requirements, while potentially competing against on-site generation.

Conclusion

This paradigm shift, in which turbines and generators would no longer be subject to stationary source permitting, is by no means a guaranteed outcome. The EPA is likely to continue down this path, but the regulatory process will take considerable time, and any effort by the agency to implement this change without adequate consideration of air quality and other factors will make the final rule more vulnerable to litigation challenges.

For data center developers, the prospect of access to on-site turbines without the delay, cost and complexity of Clean Air Act permitting is enticing. But developers must be wary.

There is significant political and legal risk to relying on on-site generation for long-term supply. Developers must engage in robust contingency planning to ensure that their data centers will have continuous access to power for the life of their facilities.

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