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June 23, 2023

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.0 20460
Email To: Regan.Michael@epa.gov

Submitted To: Docket No. EPA–HQ–OAR–2018–0794

Re: National Emission Standards for Hazardous Air Pollutants: Coal - and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review.

Dear Administrator Regan:

The Midwest Ozone Group ("MOG")[1] is pleased to offer these comments on the proposal by the U.S. Environmental Protection Agency ("EPA") to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs), commonly known as the Mercury and Air Toxics Standards (MATS). The comment period on this proposal closes June 23, 2023.

MOG is an affiliation of companies and associations that draws upon its collective resources to seek solutions to the development of legally and technically sound air quality programs that may impact on their facilities, their employees, their communities, their contractors, and the consumers of their products. MOG's primary efforts are to work with policy makers in evaluating air quality policies by encouraging the use of sound science. MOG has been actively engaged in a variety of issues and initiatives related to the development and implementation of air quality policy, including the revision of the ozone and particulate matter NAAQS, development of transport rules (including the Revised CSAPR Update and the 2015 ozone NAAQS federal implementation plan), nonattainment designations, petitions under Sections 126, 176A and 184(c) of the Clean Air Act ("CAA"), NAAQS implementation guidance, the development of Good Neighbor State Implementation Plans ("SIPs") and related regional haze and climate change and environmental justice issues. MOG Members and Participants own and operate numerous stationary sources that are affected by air quality requirements including the MATS.

[1] The members of and participants in the Midwest Ozone Group include: Alcoa, Ameren, American Electric Power, American Forest & Paper Association, American Iron and Steel Institute, American Wood Council, Appalachian Region Independent Power Producers Association, Associated Electric Cooperative, Berkshire Hathaway Energy, Big Rivers Electric Corp., Buckeye Power, Inc., Citizens Energy Group, City Water, Light & Power (Springfield IL), Cleveland Cliffs, Council of Industrial Boiler Owners, Duke Energy Corp., East Kentucky Power Cooperative, ExxonMobil, FirstEnergy Corp., Indiana Energy Association, Indiana-Kentucky Electric Corporation, Indiana Municipal Power Agency, Indiana Utility Group, LGE/ KU, Marathon Petroleum Company, National Lime Association, North American Stainless, Nucor Corporation, Ohio Utility Group, Ohio Valley Electric Corporation, Olympus Power, Steel Manufacturers Association, and Wabash Valley Power Alliance.

Specifically, EPA proposes to amend the surrogate standard for non-mercury (Hg) metal HAP (filterable particulate matter (fPM)) for existing coal-fired EGUs; the fPM compliance demonstration requirements; the Hg standard for lignite-fired EGUs; and the definition of startup. EPA states that these proposed amendments are the result of its review of the May 22, 2020, residual risk and technology review (RTR) of MATS.

For reasons set out below, MOG believes that the MATS proposal is fatally flawed both technically and legally and should be withdrawn.

1. **A standard of 0.006 lb/MMBtu or lower does not represent a better balancing of the statutory factors.**

   The EPA proposal notes that the proposed standard of 0.010 lb/MMBtu "appropriately balances CAA section 112's direction to achieve the maximum degree of emissions reductions while taking into account the statutory factors, including cost." (88 Fed Reg 24871) Inexplicably, though, EPA is "further seeking comment on whether a standard of 6.0E–03 lb/MMBtu or lower (for example 2.4E–03 lb/MMBtu, which is the average emission of the best performing 50 percent of units evaluated) would represent a better balancing of the statutory factors." *Id*

   The proposed standard of 0.010 lb/MMBtu doesn't appropriately balance the statutory factors and, accordingly, any standard that is more stringent is clearly inappropriate given the cost of compliance. CAA Section 112(n)(1)(A) as a statutory factor must be considered when doing a reconsideration of an already completed RTR given EPA's cost effectiveness numbers in the range of $80,000 - $100,000/ton of fPM.

   Remarkably, the Regulatory Impact Analysis[2] (RIA) of the proposed rule, in discussing benefits, concedes that "[t]he results presented in this section [Comparison of Benefits and Costs] provide an incomplete overview of the effects of the proposal, because important categories of benefits, including health and environmental benefits from reducing mercury and non-mercury metal HAP emissions and the increased transparency and accelerated identification of anomalous emission anticipated from requiring CEMS, were not monetized and are therefore not directly reflected in the quantified benefit-cost comparisons." (RIA at page 26).

   Based on the RIA quote cited above, EPA has failed to justify its claim that this proposed rule "appropriately balances CAA Section 112's direction to achieve the maximum degree of emissions reductions while taking into account the statutory factors, including cost," when EPA cites no benefits provided by this proposed rule, which is being proposed under the guise of Section 112, for the reduction of Hg and non-Hg metals. With no estimated Hg or non-Hg metal benefits, whatever the estimated compliance cost renders the statutory factors, especially cost, *inappropriately* balanced.

2. **EPA has not accurately assessed the variability of fPM emissions.**

EPA requests comment in the proposed rule on "requiring existing coal-fired EGUs to meet a fPM standard of 6.0E–03 lb/ MMBtu or a more stringent standard considering the higher emission reductions as well as the

[2] https://www.epa.gov/system/files/documents/2023-01/naaqs-pm_ria_proposed_2022-12.pdf

larger total costs such a standard would entail to inform our consideration of whether the more stringent standard would reduce the overall pollution burden in these communities." (88 Fed Reg 24872). Because available public data demonstrate that imposition of the proposed standard of 0.010 lb/MMBtu is not cost effective, no standard that is more stringent than the proposed standard can be considered cost effective. The benefits simply do not come close to exceeding the costs.

A significant factor regarding the reduction in the proposed fPM surrogate emission limit to 0.010 lb/MMBtu or the more stringent 0.006 lb/MMBtu is that EPA is not just revising the numerical value, it is changing both the compliance determination technique and the averaging period. Further, EPA is essentially punishing the sources that have met the low emitting EGU (LEE) limit of the MATS rule (0.015 lb/MMBtu) by eliminating the reward of testing once every three years after a lengthy demonstration of the ability to meet that limit.

From a technical standpoint, changing the numerical limit, averaging period and the compliance demonstration techniques amounts to a massive increase in the stringency of the standard compared with either revising the numerical limit without changing the compliance demonstration method or the compliance averaging period, or revising the compliance demonstration method while retaining the same numerical limit and compliance averaging period.

If there are to be changes to the numerical emission limit, then there should not be a change to the compliance demonstration method or to the frequency of testing to meet a numerical limit that is only 2/3rds of the fPM emission rate that defined a LEE under the previous rule. For context, to qualify as a fPM LEE, the source had to consistently meet a limit that was only 50% of the fPM limit finalized in the rule. Consequently, implementation of the proposed rule will reduce the fPM limit by 67% rather than the implied 33%, misrepresenting the reality of the proposal. Moreover, a change in the fPM emission limit from 0.030 to 0.010 (or lower) lb/MMBtu would likely disqualify a source from realizing "low-emitting source" status[3] without any change in source operating practices, procedures, or emission control device performance. Sources that are not "low-emitting sources" and required to install a PM CEMS are subject to more stringent requirements associated with the development of the PM CEMS correlation curve (see Performance Standard 11, Section 13.2), which are exceptionally challenging to develop irrespective of the source emitting status.

This is especially true for EGUs that are equipped with fabric filter particulate control devices (baghouses) or equipped with an electrostatic precipitator (ESP) and a flue gas desulfurization system (FGD). Baghouses are the most effective filterable particulate matter control devices available and typically an FGD will control an additional 70% of the filterable particulate matter remaining after the exhaust gas passes through the ESP, which alone removes 98-99% of the fPM. So long as there is not a physical or permitted capability to allow discretionary[4] bypass of the baghouse or ESP/FGD combination, there is no need to require continuous fPM monitoring. With these control equipment devices, which result in extremely low fPM emissions, in place, a requirement to site, procure, install, certify, operate and maintain, quality assure and maintain a data acquisition and handling system to record and maintain records is unnecessary and only serves to increase the cost of the demonstration of compliance with no demonstrated monetized benefit. There is no need to either

[3] 40 CFR 60, Appendix B, Performance Specification 11, Section 3.16 "Low-Emitting Source" means a source that operated at no more than 50 percent of the emission limit during the most recent performance test, and, based on the PM CEMS correlation, the daily average emissions for the source, measured in the units of the applicable emission limit, have not exceeded 50 percent of the emission limit for any day since the most recent performance test. (https://www.epa.gov/sites/default/files/2019-06/documents/performance_specification_11.pdf)

[4] Discretionary excluding emergency bypasses that are required by National Fire Protection Association Codes or American Society of Mechanical Engineers Codes for Boilers and Pressure Vessels.

require emissions measurement more frequently than the current fPM LEE schedule or require the use emissions measurement methods for units equipped with these fPM emissions control equipment devices. Units with these devices would be required to meet a fPM limit that is 33% lower than the current fPM LEE limit of 0.015 lb./MMBtu. In practice, other currently installed monitoring devices are used as an indicator of fPM emissions control performance (e.g., opacity monitor for units installed with a baghouse or dry FGD, mist eliminator pressure drop for units installed with a wet FGD), which also reduces the efficacy of the proposed requirements.

Because these new limits represent limits that have already been achieved, there are no environmental benefits gained except if these very costly additional requirements force additional facilities, particularly facilities that operate in restructured electric markets, to permanently cease operations, reducing grid reliability. EPA does not claim any benefit relating to air toxics, which is appropriate because there are no air toxics benefits resulting from implementation of the proposed rule. The benefits EPA claims are co-benefits. It's also worth noting that the original MATS claimed direct health benefits only for one air toxic, mercury, and that the direct benefit claimed was a very small $4-6 million per year as opposed to the total cost of $37-90 billion dollars per year. Even monetizing the benefits from air toxics reductions, purportedly the reason for the rule, doesn't make benefits of the rule exceed cost of compliance. The MATS was and is the backstop for the Clean Power Plan and it worked. The proposed rule is both unnecessary and overreaching.

The effect of this rule is to add additional costs of operations, forcing merchant coal-fired generators out of business and putting rate-based coal-fired generation at risk. Moreover, the RIA demonstrates that implementation of the proposed rule doesn't result in any meaningful environmental benefits achieved by reduction in Hg and non-Hg metals.

3. **EPA has overestimated the need for continued quarterly testing of units with binding schedules for retirement.**

EPA concedes in the preamble to the proposed rule that it is "aware that some EGUs may be on enforceable schedules to cease operations, which may be just beyond the three-year compliance date the EPA proposes for PM CEMS monitoring requirements in section V.E, below, and that owners or operators of EGUs may be unable to recoup investments in PM CEMS if the instruments are not in operation for at least a certain period of time beyond their installation date." (88 Fed Reg 24874) As a result, it "seeks comment on whether EGUs should be able to continue to use quarterly emissions testing past the proposed compliance date for a certain period of time or until EGU retirement, whichever occurs first, provided the EGU is on an enforceable schedule for ceasing coal- or oil-fired operation." (88 Fed Reg 24874) In addition to seeking comments with respect to allowance of testing for compliance, EPA also "seeks comment on what would qualify as an enforceable schedule, such as that contained in the Agency's "EGUs Permanently Ceasing Coal Combustion by 2028" included in the 2020 Steam Electric ELG Reconsideration Rule (85 FR 64640, 64679, and 64710; 10/13/2020), as well as what the maximum duration of operation using quarterly emissions testing for compliance purposes should be." (88 Fed Reg 24874)

Any EGU that is on an enforceable schedule for ceasing coal or oil-fired operation and that has not demonstrated qualification as a fPM LEE should be allowed to continue to use its emissions testing schedule past the proposed compliance date, and units that are complying by means of this emissions testing schedule should not be required to install CEMS. Those enforceable schedules were negotiated and established in arm's length transactions, presumably including consideration of operational details such as the cost of stack testing versus being required to install additional equipment. Changing the emissions testing requirement, both the test

method and frequency of emission measurement, after the fact is both unreasonable and possibly illegal.

In addition, if a unit is on an enforceable schedule for ceasing coal or oil-fired operations and is qualified as an LEE, already having demonstrated emissions of fPM at a rate below 0.015 lb/MMBtu using quarterly emissions testing over a three year period, then that currently qualified fPM LEE should be allowed to test at the current LEE schedule or annually at most. Quarterly testing of this class of unit provides no environmental benefit and simply adds cost.

Accordingly, MOG urges EPA to allow use of the aforementioned testing schedules for these units with enforceable schedules for ceasing coal or oil-fired operations until such time as they cease coal or oil-fired operations as set forth in the applicable enforceable schedule.

4. **Whether there are any areas where EPA has overestimated costs, including some of the generation and storage technologies discussed in the rule as well as the cost of PM controls themselves.**

Based upon publicly available data, EPA has grossly underestimated the cost of installing and operating a PM CEMS, grossly overestimated the cost of stack testing, and has failed to provide the true additional costs of the proposal. For example, according to a June 2023 report styled "Technical Comments on National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-fired Electric Utility Steam Generating Units Review of Residual Risk and Technology"[5], of three categories of ESP upgrades considered by EPA, the cost for the most extensive – a complete rebuild to add collecting plate area – is inadequate. Four such major ESP rebuild projects have been implemented for which costs are reported in the public domain – and not acknowledged by EPA. Incorporating these results elevates the range of cost from EPA's estimate of $75-100/kW to $57-213/kW. Consequently, the "average" cost for this action used in the cost per ton ($/ton) evaluation increases from $87/kW to $133/kW.[5]

As a consequence of under-predicting capital required for ESP "rebuild", and not recognizing the need for a design and operating margin, EPA under-predicts the number of units requiring retrofit or upgrade by half (20 vs 37). As a result, EPA's estimate of incurred cost of $12,200-$14,700/ton to comply with a PM rate of 0.010 lb/MMBtu is only one quarter of the $47,371/ton average cost projected by units for which there is publicly available data.[5]

Another example of EPA underestimating PM CEMS cost is that EPA has estimated the cost of installed PM CEMS ranging from $35,000 (citing the Institute of Clean Air Companies (ICAC)) to $234,070 (citing EPA MCAT Extractive figures) (88 Fed Reg 24873, Table 4). A more reasonable assumption based on ongoing supply chain challenges, requirements for specialized installation and significantly higher cost of project management labor may result in an estimated installation cost as high as $350,000 for a PM CEMS based on information from ICAC.

EPA also appears to have averaged the cost estimates of dry and wet stack installations, which ignores the added cost and operations and maintenance issues for a PM CEMS in a wet, or scrubbed, stack. EPA also

[5] Technical Comments on National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-fired Electric Utility Steam Generating Units Review of Residual Risk and Technology, Prepared for National Rural Electric Cooperative Association American Public Power Association, America's Power, Midwest Ozone Group, NAACO,
National Mining Association, Power Generators Air Coalition, prepared by Cichanowicz, Marchetti, and Hein, June 19, 2023

overstates the cost of individual M5 tests at $15,522, when typical costs can run between $5,000 to $10,000. EPA has thus grossly underestimated the costs of compliance regarding installation, maintenance, and operation of a PM CEMs and grossly overestimated the cost of quarterly testing. EPA must recalculate the Equivalent Uniform Annual Cost using accurate costs and that recalculation will most likely show that quarterly stack testing is the most cost-effective option. Therefore, EPA should not require PM CEMS for compliance because it is not cost effective. Installation of a PM CEMS should remain an option for the EGU sector but not be mandated.

A final point regarding cost is that regarding cost, by eliminating the LEE provisions which allow once per three year emissions testing as an incentive to be a low emitter, EPA is forcing massive cost increases on the lowest emitting affected EGUs by requiring continuous emissions monitoring, record keeping, and reporting.

In summary, EPA has grossly overestimated costs of stack testing for compliance and grossly underestimated the cost of installation, maintenance, and operation of PM CEMs for compliance.

5. **IPM model data for PM does not agree with EPA's alleged 0.010 lb/MMBtu operating rate for units subject to the MATS.**

EPA assumed a very unrealistic implementation of the Inflation Reduction Act and the implementation of renewable assets. Future operating scenarios modeled by IPM do not project adequate replacement capacity to offset the capacity of coal projected to be retired in 2030. This shortcoming appears prompted by EPA not fully considering the grid reliability issues confronting the Electric Power Sector. Consequently, IPM created a flawed Baseline scenario, which does not adequately measure the impacts of the proposed rule. Most notably, IPM predicts only 500 MW of coal capacity will retire in response to the proposed rule.[5] Grid operators predict significantly more retirements based on the suite of EGU focused rules EPA has proposed in 2023.

6. **The CAA does not authorize EPA to promulgate a rule based 100% on co-benefits as EPA has done with this rule.**

EPA has failed to economically justify the proposed rule. The cost of compliance with the proposed rule far outweighs the benefits attributable to the stated purpose of the rule of reducing emissions of Hg and non-Hg metal HAP. EPA discusses the cost and benefits of the proposed rule at length, noting that "[t]his proposed rule is projected to reduce PM2.5 and ozone concentrations, producing a projected PV of monetized health benefits of about $1.9 billion, with an EAV of about $220 million discounted at 3 percent. The projected PV of monetized climate benefits of the proposal are estimated to be about $1.4 billion, with an EAV of about $170 million using the SC–CO2 discounted at 3 percent. Thus, this proposed rule would generate a PV of monetized benefits of $3.3 billion, with an EAV of $390 million discounted at a 3 percent rate." (88 Fed Reg 24891) Incredibly, EPA adds in this proposal to reduce Hg and non-Hg metal HAP that "[t]he potential benefits from reducing Hg and non-Hg metal HAP were not monetized and are therefore not directly reflected in the monetized benefit-cost estimates associated with this proposal. Potential benefits from the increased transparency and accelerated identification of anomalous emission anticipated from requiring CEMS were also not monetized in this analysis and are therefore also not directly reflected in the monetized benefit-cost comparisons. We nonetheless consider these impacts in our evaluation of the net benefits of the rule and find, if we were able to monetize these beneficial impacts, the proposal would have greater net benefits than shown in Table 12." (88 Fed Reg 24891) (emphasis supplied)

EPA has provided no estimated benefits for the reductions of Hg and non-Hg metal HAP from EGUs. MACT standards such as the proposed standards must be supported by clear economic benefits. Based on the benefits of the proposed rule claimed by EPA, EPA is essentially using MACT controls to drive reductions of PM2.5 and ozone, which are criteria pollutants, but with no analysis of whether implementation of the rule will result in attainment in non-attainment areas or even whether these reductions are necessary to meet a NAAQS. The CAA is quite clear in establishing an orderly process by which delegated states attain criteria pollutant NAAQS and the use of MACT controls is not appropriate for that purpose.

CAA §110 establishes the process for state implementation plans for national primary and secondary ambient air quality standards. Section 110(a) requires, in pertinent part, that

> (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State...

The CAA §110 process described above has been the anchor of air quality management since the promulgation of the CAA Amendments of 1970 and, based on the dramatic improvement in air quality since 1970, has worked well for more than 40 years. The proposed rule is inconsistent with the CAA §110 process since it would utilize CAA §112 MACT controls for the purpose of reducing emissions of PM2.5, which is a criteria pollutant.

Because EPA has failed to economically justify the proposed rule and the cost of compliance with the proposed rule far outweighs the benefits attributable to the stated purpose of the rule of reducing emissions of HG and non-HG metal HAP, the proposed rule should be withdrawn.

7. The CAA does not authorize EPA to assign benefits to a PM rule that include benefits in areas attaining the PM or ozone NAAQS.

Clean Air Act Section 109(b)(1) requires that NAAQS established by EPA "shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health." (emphasis supplied) EPA has established PM NAAQS and the majority of the monitors in the United States are in attainment with the current PM NAAQS. EPA explained its benefits calculation in the RIA for the proposed rule as follows:

"To assess economic value in a damage-function framework, the changes in environmental quality must be translated into effects on people or on the things that people value. In some cases, the changes in environmental quality can be directly valued. In other cases, such as for changes in ozone and PM, a

health and welfare impact analysis must first be conducted to convert air quality changes into effects that can be assigned dollar values.

We note at the outset that EPA rarely has the time or resources to perform extensive new research to measure directly either the health outcomes or their values for regulatory analyses. Thus, similar to work by Künzli et al. (2000) and co-authors and other, more recent health impact analyses, our estimates are based on the best available methods of benefits transfer. Benefits transfer is the science and art of adapting primary research from similar contexts to obtain the most accurate measure of benefits for the environmental quality change under analysis. Adjustments are made for the level of environmental quality change, the socio-demographic and economic characteristics of the affected population, and other factors to improve the accuracy and robustness of benefits estimates." (RIA at 93)

EPA has failed to provide an accurate estimate of health benefits, in part because of a lack of time. In addition, the RIA states that "[t]he benefit of the reduction in each health risk is based on the exposed individual's willingness to pay (WTP) for the risk change…" (RIA at 87) rather than on the air quality improvements in specific areas resulting from implementation of the proposed rule. Since much of the country is in attainment with the current PM and ozone NAAQS, which by law are established at levels required to protect human health with an adequate margin of safety, it is not appropriate to include as benefits the monetization of health improvements resulting from implementation of the proposed rule that might occur due to possible reductions in criteria pollutants (e.g., ozone and PM) in areas that are already attaining the PM or ozone NAAQS. In addition, EPA makes the erroneous assumption that all PM is the same when, in fact, it is well documented that different species of PM are more deleterious to human health than others.

8. **EPA's choice of only two quarters and a portion of a third quarter in which the quarter selected includes lowest unit PM emissions from its data base of quarterly data between 2017 and 2021 is arbitrary and capricious.**

The Cichanowicz, Marchetti, Hein report[5] concludes that "EPA's database of PM emissions is inadequate. EPA attempts to capture typical PM emissions by acquiring samples from 3 years – 2017, 2019, and 2021. For the vast majority of the units – 80% - EPA uses only 2 of the potentially available 12 quarters of data to construct the PM database. Further, of these limited samples EPA, cites the lowest - thus for most 1 of 2 samples – to reflect a reasoned target PM emissions rate. EPA cites the use of the '99th percentile' PM rate in lieu of the average compensates for variability; but this approach fails to account for long-term changes in fuel and process conditions."

EPA does not explain the rationale for using minimal data to characterize "typical" PM emissions from facilities expected to be subject to the proposed rule when it had years of data points available. The resulting analysis of projected impacts of the proposed rule is inevitably biased by the failure to use all available data, and the data used by EPA is not representative. Accordingly, MOG urges EPA to, at a minimum, revise the rule based on sound science and use of all available data before publishing a final rule and, preferably, because there are no environmental benefits with respect to Hg and non-Hg meatal emissions reductions, withdraw the proposal.

9. **CAA Section 112 does not require EPA to reduce emissions for a category for which there is no or very low residual risk identified.**

The preamble to the proposed rule states that "[t]he EPA has reviewed the 2020 Residual Risk Review as directed by E.O. 13990. This included a review of the 2020 residual risk assessment described in Docket ID No. EPA–HQ– OAR–2018–0794–0014 and consideration of comments received in response to the 2022 Proposal. The EPA did not receive any new information in response to the 2022 Proposal that would affect the EPA's 2020 residual risk analysis or the decisions emanating from that analysis. In reviewing the 2020 residual risk analysis, the EPA has determined that the risk analysis was a rigorous and robust analytical review using approaches and methodologies that are consistent with those that have been utilized in residual risk analyses and reviews for other industrial sectors. In addition, the results of the 2020 residual risk assessment, as summarized in section IV.A of this preamble, indicated low residual risk from the coal- and oil-fired EGU source category. For these reasons, we are not proposing any revisions to the 2020 Residual Risk Review. (88 Fed Reg 24866) (emphasis supplied)

> EPA cites the case of *La. Envtl. Action Network v. Envtl. Prot. Agency*, (955 F.3d 1088, D.C. Cir. 2020) (LEAN) in support of its position that MACT standards may be revised even though the mandatory residual risk review finds no residual risk for the source sector being reviewed. LEAN states in pertinent part that
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> > The provision at issue here, section 112(d)(6), requires EPA, on an ongoing periodic basis, to revisit and update emission standards that it has already set for each source. No less than every eight years, EPA must "review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section." *Id.* § 7412(d)(6). That review ensures that, over time, EPA maintains source standards compliant with the law and on pace with emerging developments that create opportunities to do even better.
> >
> > In addition to its section 112(d)(6) review, EPA under section 112(f)(2) must conduct a one-time review within 8 years of promulgating an emission standard to, among other things, evaluate the residual risk to the public from each source category's emissions and promulgate more stringent limits as necessary "to provide an ample margin of safety to protect public health." *Id.* § 7412(f)(2)(A)" La. Envtl. Action Network v. Envtl. Prot. Agency, 955 F.3d 1088 at 1093 (D.C. Cir. 2020)

However, LEAN stands only for the proposition that, when conducting an RTR, EPA is obligated to revise the standard to include pollutants listed under Section 112(b) that were not included in the original Section 112(d)(3) limits. Significantly, LEAN cites another case, "Surface Finishing" (Nat'l Ass'n for Surface Finishing v. EPA, 795 F.3d 1, 4 (D.C. Cir. 2015), which allows for ratcheting down of standards as a result of "developments," but does not require it. Surface Finishing seems to be more on point than LEAN, and provides EPA options. It does not say that EPA can revise limits when it determines those limits are achievable. In fact, 112(d)(6) requires that EPA revise standards "as necessary" taking into account developments in practices, processes and control technologies. In the proposed rule, EPA finds only that the 0.010 lb/MMBTu limits are achievable, *not* that they are necessary. Moreover, EPA points to no "developments" to support the proposal; rather EPA only notes that the proposed emission limits are achievable.

EPA has based the proposed rule on an incorrect proposition. The proposed revised standards are not necessary under Section 112(d)(6) because EPA has failed to demonstrate that developments require updates. Indeed, EPA concedes that the proposed rule will provide no public health benefits for reduction in Hg and non-Hg metals, and Section 112(n)(1)(A) requires EPA to regulate EGUs only if there is a public health hazard after imposition of the requirements of the Act. Here, EPA has found no public health hazard and therefore it cannot find that it is "necessary" under Section 112(d)(6) to revise the standards, even if it does find reduced limits achievable.

Congress clearly expressed its intent in the Clean Air Act in Section 112(f) that EPA should not lower standards when risks are acceptable.

Clean Air Act Section 112(f)(2)(A) states

> (2)Emission standards
> (A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d), promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category. (emphasis supplied)

The statutory language itself only directs EPA to revise a standard if it determines that a revision is *necessary* to prevent an adverse environmental impact. In the case of the proposed rule, EPA points to no additional adverse environmental impacts caused by emission of Hg or non-Hg HAP. Indeed, in this case, EPA can only point to benefits of additional reductions of ozone and PM, which are criteria pollutants, and not HAPS which are the purported subject of the proposed rule. In a case such as the proposed rule, when the agency knows that the residual risk of the constituent it purportedly is attempting to address is acceptable with an ample margin of safety, EPA should not be issuing new standards.

10. EPA continues to ignore grid reliability concerns in its EGU focused rulemaking processes.

EPA has proposed several EGU-focused rules in 2023, including a Federal Good Neighbor transport

rule, a greenhouse gas reduction rule, and this proposed Hg and non-Hg metals rule. In each proposal, EPA asserts that it has worked with grid operators and that the proposed rule poses no grid reliability issues. With respect to the Good Neighbor rule, Principal Deputy Assistant Administrator for the Office of Air and Radiation Joe Goffman spoke at an April 2023 meeting of The Association of Air Pollution Control Agencies (AAPCA) and stated to the AAPCA attendees that EPA had revised the proposed Good Neighbor rule, working with grid operators, such that grid reliability is not an issue in the final rule. More recently, Office of Air and Radiation Deputy Assistant Administrator for Stationary Sources Dr. Tomas Carbonell, in remarks to participants at a virtual annual meeting of the OTC/MANEVU Commissioners, made multiple refences to the recently proposed EGU carbon rule, noting that its offers plant and grid operators the ability to provide reliable power.

These assertions by EPA regarding reliability fly in the face of warnings regarding grid reliability by multiple grid operators. The issue is captured most succinctly and most recently in testimony of PJM Interconnection President and CEO Manu Asthana who, in testimony before the United States Senate Committee on Energy & Natural Resources on June 1, 2023, said that "[c]urrently, the nation is developing environmental and reliability policy in separate silos with limited and not very transparent coordination between the environmental and reliability regulators. Increased coordination and synchronization

of the nation's environmental and reliability needs may require discrete changes to the statutes governing each agency's mission to embrace this effort. But the time may be ripe to initiate these statutory changes so that each regulator has both the authority and ability to develop policies that harmonize and meet both the nation's reliability and environmental goals." This sentiment is consistent with comments filed by multiple grid operators regarding the Federal Good Neighbor rule and EPA continues to ignore the issue in proposing this rule.

Conclusion

For all of the aforementioned reason, MOG urges EPA to withdraw the MATS proposal because it is fatally flawed both technically and legally.

Very truly yours,

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