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U.S. Environmental Protection Agency  
EPA Docket Center  
Docket ID No. EPA-HQ-OAR-2025-0194  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

RE: Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards; Docket No. EPA-HQ-OAR-2025-0194.

To Whom It May Concern:

The Midwest Ozone Group ("MOG") is pleased to have the opportunity to offer comments regarding the proposed rule of the United States Environmental Protection Agency ("EPA") published in the Federal Register on August 1, 2025, (90 Fed. Reg. 36,288) and entitled "Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards" ("Proposed Rule"). The comment period on the proposed rule was extended until September 22, 2025. 90 Fed. Reg. 39,345 (August 15, 2025).

Based on a reassessment of the legal and technical conclusions in the 2009 entitled "Endangerment and Cause or Contribute Finding for Greenhouse Gases Under Section 202(a) of the Clean Air Act" 74 Fed. Reg. 66,496 (December 15, 2009) (Endangerment Finding), EPA proposes to rescind all greenhouse gas (GHG) emission standards for light-duty, medium-duty, and heavy-duty vehicles and engines under Clean Air Act ("CAA") Section 202(a).

EPA takes the position that the Proposed Rule rescinding of the Endangerment Finding and repealing the vehicle and engine GHG emissions standards will not impact Federal preemption of new motor vehicle and engine emission standards. EPA notes that new motor vehicles and engines would remain subject to Title II of the CAA, which would preempt state or local standards related to controlling motor vehicle and engine emissions. EPA additionally notes that the CAA would preempt

Federal common-law claims related to GHG emissions because “Congress delegated to EPA the decision whether and how to regulate’ such emissions.” (*Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011)). EPA goes on to state that the proposed rule would not prohibit EPA from regulating GHGs from new motor vehicles and engines if the Administrator determined that one or more of the six GHGs meet the CAA Section 202(a) requirements for regulation. 90 Fed. Reg. at 36,314-15.

MOG supports EPA’s conclusion that Federal preemption continues to apply to GHG emissions from new motor vehicle and engines and that EPA would continue to retain its authority to regulate emissions, including emissions of the six “well-mixed” GHGs addressed in the Endangerment Finding, under circumstances that meet the standard for regulation under CAA section 202(a) and related authorities. 90 Fed. Reg. at 36,297.

EPA makes it clear that it may reconsider and propose to revise regulatory provisions governing criteria pollutants or air toxics from new motor vehicles and engines in a separate rulemaking. 90 Fed. Reg. at 36,314. The administration of the rule of law must be based on principles of “reasoned explanation” of *Massachusetts* (citation to *Chevron v. NRDC*, 467 U.S. 837 (1984)) and more recently *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In *Massachusetts*, the Court ruled,

We need not and do not reach the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform EPA’s actions in the event that it makes such a finding. Cf. *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–844 (1984). We hold only that EPA must ground its reasons for action or inaction in the statute.

549 U.S. at 527.

Indeed, the Supreme Court made clear that EPA action (or inaction) with regard to regulating GHG emissions from power plants under CAA section 111 displaces any federal common law right to seek abatement of CO2 emissions from power plants:

The plaintiffs argue, as the Second Circuit held, that federal common law is not displaced until EPA actually exercises its regulatory authority, i.e., until it sets standards governing emissions from the defendants’ plants. We disagree....

The critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from power plants; the delegation is what displaces federal common law. Indeed, were EPA to decline to regulate carbon-dioxide emissions altogether at the conclusion of its ongoing §7411 rulemaking, the federal courts would have no warrant to employ the federal common law of nuisance to upset the agency's expert determination.

*Am. Elec. Power Co. v. Connecticut*, 564 U.S. at 426.

The Midwest Ozone Group appreciates the opportunity to offer these comments and supports EPA's conclusion that the actions proposed do not impact Federal preemption.

Very truly yours,

*/s/ Kathy G. Beckett*

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DMF/tas  
Enclosures