STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

PO Box 36425
Indianapolis, IN 46236
www.steptoe-johnson.com

Writer's Contact Information
(317) 946-9882
Skipp.Kropp@steptoe-johnson.com

November 17, 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–2004–0489

Re: Revisions to the Air Emissions Reporting Requirements

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 revise EPA's Air Emissions Reporting Requirements (AERR). 88 Fed. Reg. 54,118 (August 9, 2023) The comment period on this proposal closes November 17, 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 numerous air quality requirements.

Specifically, EPA proposes to "require certain sources report information regarding emission of hazardous air pollutants (HAP); certain sources to report criteria air pollutants, their precursors and HAP…The proposed revisions would also define a new approach for optional collection by air agencies of such information on HAP by which State, local and certain tribal air agencies may implement requirements and report emissions on behalf of owners/ operators. The proposed revisions would also make the requirements for point sources consistent for every year; phase in earlier

[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, Hoosier Energy REC, inc., 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.

deadlines for point source reporting; and add requirements for reporting fuel use data for certain sources of electrical generation associated with peak electricity demand. The proposed revisions include further changes for reporting on airports, rail yards, commercial marine vessels, locomotives, and nonpoint sources. For owners/operators of facilities that meet criteria described in this proposal, the proposed revisions would require reporting of performance test and performance evaluation data to the EPA for all tests conducted after the effective date provided in the final rulemaking. The EPA also proposes to clarify that information the EPA collects through the AERR is emission data that is not subject to confidential treatment." (88 Fed Reg 54,118)

For reasons set out below, MOG believes that the proposed revisions are fatally flawed both technically and legally and must be revised if EPA intends to issue a final rule.

1. **EPA has grossly underestimated the time for adding in the "initial" data requested in Table 2A and the time for reporting elements listed in Tables 2B and 2C.**

   EPA estimates that this proposed rule will affect "approximately129,500 facilities." (88 Fed Reg 54,136) This is a gross increase in the number of "new" point sources covered by the proposed rule, and all "new" point sources will be required to report process and emissions data by emission unit, fuel usage, testing, latitude/longitude of emissions unit, and fugitive emissions. EPA has grossly underestimated the time for entering the "initial" data requested in Table 2A, and time for reporting elements listed in Tables 2B and 2C. 88 Fed. Reg. at 54220-54222. Moreover, many of the facilities that are newly required to report data will be smaller facilities that are unfamiliar with the mechanics of reporting these kinds of data and will take much longer to enter the data for the first time than EPA estimates. In addition, if a facility has a scheduled future deactivation date, e.g., 2029 or later, perhaps because of a different regulation, that facility should not be subject to the reporting requirements required by the proposed revisions and any efforts and costs associated with the proposed revisions should be unnecessary for those facilities. Indeed, MOG notes the existence of a Small Business Advocacy Review Panel report styled "PANEL REPORT of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule Revisions to the Air Emissions Reporting Requirements," and dated January 3, 2023 (https://www.regulations.gov/document/EPA-HQ-OAR-2004-0489-0096). That panel reviewed revisions to the AERR being considered by EPA *prior* to the current proposal that did not include a number of the significant proposed revisions, such as including portable and mobile sources within the definition of "major source." The report provides responses of numerous small entity representatives (SERs) to the revisions then being consider by EPA. MOG notes that, on an annual basis, the estimated cost per facility reported in the early 2023 report for only a few categories of small businesses affected by the proposed rule revisions would grossly exceed EPA's cost estimations for the number of sources it estimates will be affected by the proposed rule.

   Accordingly, MOG objects to the increased number of additional emission points, insignificant activities, mobile sources, portable sources and events required to be reported by the proposed rule revisions. As a result, MOG urges EPA to modify any final rule to exclude a requirement to report emissions that are less than a de minimus amount, e.g., 2 1/2 tons of total HAP per year or, at a minimum, exempt reporting of emissions from insignificant activities as defined in Title V programs.

Significantly, state and local agencies that currently collect HAP data from facilities perform significant quality assurance and provide customer support that is beyond basic, automated quality control processing that is incorporated into emissions inventory collection systems like CAERS. MOG has two concerns regarding quality control and quality assurance functions resulting from implementation of the revisions as proposed. First, emissions reported directly to U.S. EPA by owners or operators using the CAERS system will require additional data quality processing that may be lost or are not currently described in the rule revisions. Second, based on the EPA estimated 129,500 sources covered under the proposal, MOG is concerned that it will not be possible for EPA to provide the regulated sources the

level of support that is currently provided by state and local agencies.

2. **The EPA implementation schedule is not achievable.**

EPA specifies in Table 3 of the preamble that Phase 1 reporting deadline for point source reporting from owners/operators to the EPA will be required five (5) months after the end of the inventory year beginning in 2026, based on a presumable final rule by June 2024. However, for sources that currently report emissions to states, this timeline is insufficient to allow for state rulemaking and subsequent EPA approval in many states, resulting in confusion for the regulated community.

EPA also appears to contradict itself between the preamble description and the proposed regulatory text. The timing proposed in 40 CFR § 51.5 will require 12 of the 17 paragraphs, all except Paragraphs (b) through (f), to become effective starting with inventory year 2023. (88 Fed Reg 54,118 at 54,201) In addition to the inadequate implementation schedule being proposed, MOG objects to EPA requiring reporting requirements to become effective for the same inventory year the rule was proposed and prior to the inventory year when the rule will become effective.

3. **EPA has failed to assess the security risk resulting from the release of the additional information that will be made public under the rule revisions.**

EPA's proposal is fundamentally inconsistent with national security policy.

The mission of the Department of Energy (DOE) is "to ensure America's security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions." (https://www.energy.gov/mission) DOE states that it "plays an important and multifaceted role in protecting national security," noting that "[i]n addition to our work to increase nuclear nonproliferation and ensure the security of the U.S. nuclear weapons stockpile, we…*invest in protections against cyber and physical attacks on U.S. energy infrastructure*, conduct programs to ensure worker health and safety, and provide training tools and procedures for emergency response and preparedness." (https://www.energy.gov/national-security-safety). The regulations implementing the DOE program include the process by which the DOE must release information in response to a request made under the US Freedom of Information Act, 5 USC 552. The implementing regulations define "Critical Electric Infrastructure" as "a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters" at 10 CFR 1004.13(c)(3) and "Critical Electric Infrastructure Information (CEII)" as "information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to FERC or another Federal agency, other than classified national security information, that is designated as CEII by FERC or the Secretary pursuant to section 215A(d) of the FPA. Such term includes information that qualifies as critical energy infrastructure information under FERC's regulations." (10 CFR 1004.13(c)(4))

Significantly, the DOE FOIA response rules specifically exempt CEII from disclosure because of the potential catastrophic impact release of that information would have on the security of the national power grid.

In addition, FERC regulations on information and requests (18 CFR 388) include the following sanctions for knowing and willful disclosure of CEII:

"Sanctions. Any officers, employees, or agents of the Commission who knowingly and willfully disclose CEII in a manner that is not authorized under this section will be subject to appropriate sanctions, such as removal from the federal service, or possible referral for criminal prosecution. Commissioners who knowingly and willfully disclose CEII without authorization may be referred to the Department of Energy Inspector General. The Commission will take responsibility

for investigating and, as necessary, imposing sanctions on its employees and agents." (18 CFR 388.113(h)).

The proposed AERR rule specifically defines all data required to be reported as "emission data," noting that "…EPA proposes to add the determination that all data that parties are required to report under the revised AERR, including the data from the additional categories associated with emissions testing, is "emissions data" as defined at 40 CFR 2.301(a)(2)(i). As emissions data, the reported information is not subject to confidential treatment in accordance with CAA section 114(c), which provides for the public disclosure of such information. This proposed revision is intended to clarify that the EPA will not treat any data reported to the EPA under this rule (including the HAP data) as confidential in accordance with CAA requirements for emissions data and that entities who are responsible for reporting cannot withhold information based on claims of confidentiality." (88 Fed. Reg. at 54,164, emphasis supplied). In doing so, EPA fails to recognize the national security sensitivity related to making public such data as latitude and longitude of emission points at power facilities. The release of that data as "emission data" flies in the face of the DOE regulations. Accordingly, MOG objects to the proposal to define all data to reported under the proposed AERR revisions as "emissions data," making it public under the FOIA if requested, and urges EPA to protect CEII reported as part of any final AERR revision the same way DOE mandates protection of that information.

4. The proposed revisions do not comply with the Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S. Code § 3501 *et seq*) ("Paperwork Act") includes the following requirements:

Section 3506

> (b) With respect to general information resources management, each agency shall—
> '(1) manage information resources to—
> (A) reduce information collection burdens on the public; '
> (c) With respect to the collection of information and the control of paperwork, each agency shall—…
> (2)(B)(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—
> (A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;
> (B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;…
> (E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond… (emphasis supplied)

The Act applies to EPA, meaning that EPA must certify that each information collection request "[i]s necessary for the proper performance of the functions of the agency;" "[i]s not unnecessarily duplicative of information otherwise reasonably accessible to the agency;" "[r]educes to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency;" and "[i]s to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond." EPA's certification on each of these points is inaccurate.

EPA proposes to collect information that is not "necessary" for the proper performance of EPA. EPA states with respect to purpose that "[t]he proposed amendments in this action would ensure that the EPA has sufficient information to identify and solve air quality and exposure problems. The proposed amendments would also allow the EPA to have

information readily available that the Agency needs to protect public health and perform other activities under the Clean Air Act (CAA or "the Act"). Further, the proposed amendments would ensure that communities have the data needed to understand significant sources of air pollution that may be impacting them—including potent carcinogens and other highly toxic chemicals linked with a wide range of chronic and acute health problems. The EPA has taken a systematic approach in developing this proposed action to ensure that key emissions information is collected in a streamlined way, while preventing unnecessary impacts to small entities within the communities we seek to inform and protect. The proposed amendments would continue EPA's partnership with States in a way that also respects the cooperative federalism framework provided by the CAA." (88 Fed Reg 54,121)

None of those stated purposes are "necessary for the proper performance of the functions of the agency," as required by the Paperwork Act. Indeed, EPA has functioned for over five decades without having this additional information.

The Paperwork Act requires agencies not to impose undue and unnecessarily duplicative burdens, particularly on small businesses, but the proposed revisions will require both small and large businesses to provide information in forms that are clearly both burdensome and unnecessarily duplicative of information already available to EPA. As noted below, the proposed revisions will significantly overlap with the TRI and other reporting programs, but the EPA proposal makes no effort to reconcile it with any other reporting program to minimize duplicative reporting requirements.

EPA estimates that the proposed revisions will apply to some 129,500 facilities, resulting in a requirement for the submission of information indefinitely on an annual basis, and requiring thousands of businesses to make determinations regarding whether the revisions apply to them. EPA cannot believe that these proposed revisions "reduce to the extent practicable" the burden on affected entities.

For the aforementioned reasons, in addition to the points made elsewhere in these comments, MOG believes that implementation of the proposed information collection and the proposed AERR revisions would violate the Paperwork Act and urges that EPA either drastically reduce the scope of any final rule or withdraw the proposal.

5. **The EPA proposal leaves much unclear because of the failure to exempt de minimus sources from the reporting requirements.**

The proposal fails to clearly define either mobile and portable sources or activity levels to be reported. The proposed revisions add the term "mobile source" to the definition of "point source" and require at proposed 40 CFR 51.5(b) that "[a] State or owner/operator must include emissions from mobile sources (excluding aircraft and ground support equipment) operating primarily within the facility site boundaries of a point source or multiple adjacent point sources when assessing whether its facility emissions exceed the emissions reporting thresholds in Tables 1A and 1B to Appendix A of this subpart and when submitting point source emissions data under this subpart."

As an example of the challenges associated with this proposed change, consider that EPA proposes to define point sources reported under the proposed rule in 40 CFR 51.5 to "(1) Include total annual actual emissions from all stack and fugitive release points at the facility; and (2) Include emissions from mobile sources as described by § 51.5(b) of this subpart,…"

The proposed 40 CFR 51.50 definitions are:

"Mobile source means a motor vehicle, nonroad engine or nonroad vehicle, where: (a) A motor vehicle is any self-propelled vehicle designed for transporting persons or property on a street or highway; (b) A nonroad engine is an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for

competition, or that is not subject to standards under sections 111 or 202 of the CAA; and (c) A nonroad vehicle is a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition."

"Point source means a stationary or portable facility that (1) is a major source under 40 CFR part 70 for any pollutant, or (2) has PTE or annual actual emissions of pollutants greater than or equal to the reporting thresholds in Table 1A to Appendix A of this subpart, or (3) has a primary NAICS code listed in Table 1C to Appendix A of this subpart and annual actual emissions of pollutants greater than or equal to the reporting HAP reporting thresholds (presented in Table 1B to Appendix A of this subpart). In assessing whether emissions levels exceed reporting thresholds, all provisions of this subpart related to emissions estimation approaches apply, including §§ 51.5 and 51.10 of this subpart."

In contrast, CAA Section 112 (a)(2) defines "area source" as "any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term 'area source' shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II of this chapter," and CAA Section 111(a)(3) defines "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines." (emphasis supplied)

The definitions in Sections 111 and 112 show clear Congressional intent that mobile sources may not be regulated under Subchapter I of the CAA; rather, they are to be regulated under Subchapter II. Therefore, EPA cannot require aggregation of mobile sources emissions under the rubric of point sources as proposed in the regulation.

Further support for the proposition that Congress did not intend for mobile sources to be regulated under Subchapter I is found in CAA Section 202 (l)(2), which requires that "[w]ithin 54 months after November 15, 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) of this section or section 7545(c)(1) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. …" where the cite to section 7545(c)(1) relates to regulation of fuels. These two sections of the statute alone clarify that Congress intended the regulation of HAPs for mobile sources and off road engines through the regulation of the fuels standard and not under Section112.

MOG notes that including mobile source emissions under the point source category also results in double counting of mobile source emissions. Motor vehicles are registered in the county in which the point source facility is sited. State or local agencies therefore report these emissions in their MOVES modeling along with non-road sources. Title V point sources have not been required to report this kind of data in the past and all mobile sources are not equal so the process to determine required data is vague.

Another example needing clarification is the type and level of activity EPA believes must be reported. Proposed 40 CFR 515.50 (88 Fed. Reg. at 54,210) defines "activity data" by example, stating activity data is "data needed to calculate emissions using an emission factor or emissions calculation tool. Activity data varies depending on the emissions calculation approach and therefore the emissions source. Examples of activity data include fuel consumed for combustion emissions, landing and takeoff data for airport emissions, acres burned, material used for solvent evaporation emissions, and vehicle miles traveled for onroad mobile source emissions." This is an ambiguous definition and here again MOG urges EPA to clearly define the level of activity it believes must be reported.

A final example of needed clarification, which is by no means exhaustive of the issue, is the use of the term "portable facility, "which EPA defines as "…a facility that does not have a fixed location such as an asphalt plant or portable drilling rig, mobile offshore drilling units (MODUs), and offshore installation vessels." (88 Fed Reg 54211) Traditional Title V point sources have not dealt with this kind of description and MOG believes it, and many others, are ambiguous and in need of clarification in any final rule.

MOG also objects to the requirement to evaluate emissions from mobile sources operated exclusively on-site. Stationary sources are not in a position to control emissions from mobile sources, and the Clean Air Act is designed to address these concerns by imposing standards of performance on manufacturers through Title II. Stationary sources are also not accustomed to estimating emissions from mobile sources, which raises concerns about the quality of data EPA would obtain from this requirement. For the aforementioned reasons, MOG urges EPA to both clarify these and other ambiguous definitions and to delete the requirement to report mobile source emissions as part of point source emissions in any final rule.

6. **MOG requests clarification regarding use of emission factors for HAPs that do not exist in AP-42 and WebFIRE.**

The proposal states (88 Fed. Reg. at 54,146) that:

> "The EPA is considering how best to implement such an emissions estimation tool. Currently, the EPA is considering first ensuring that it includes key industrial processes that can be estimated at a facility level, relying on activity information that is readily available to small entities. Such industrial processes might be fuel combustion, solvent evaporation, and activities that create toxic dusts. Emission rates would depend on whether emissions controls are present and the type of controls if present. Emission factors would be used to translate some activity measure at a facility (e.g., fuel usage) to emissions. To use such an estimation tool, an owner/ operator would need to (1) identify its emitting activities from a list that the EPA would provide and (2) enter total facility information for fuels, other materials, energy used, or other information that could even include the number of employees. The type of information used in the emissions estimation tool would depend on the available data for each emitting activity. The tool would show the estimated emissions levels and which ones (if any) were above the reporting thresholds.
>
> The EPA is also considering the possibility of misuse of the tool by owners/operators to avoid reporting responsibility. For example, we have considered the possibility that an owner/operator might intentionally enter low activity data into EPA's tool to ensure emissions were below the applicable reporting threshold. The EPA's conclusion is that this would violate the requirement under § 51.5(a) of this proposed rule to use the best available information to estimate emissions. Further, if the facility was actually emitting at or above the applicable reporting threshold but not reporting those emissions, that too would be a violation of the proposed requirements. The EPA plans to develop this tool to assist facilities with determining whether they emit at or above the applicable reporting threshold (and thus would be required to report) and to help them estimate emissions for reporting. Use of the tool, however, does not excuse an owner/operator, or a State, from complying with all applicable requirements. As part of using the tool, owner/operators would need to follow the directions provided as part of the estimation tool. The EPA also expects the tool would include a mechanism for users to indicate that the information entered is complete and accurate to the best of their knowledge." (emphasis supplied)

Because of both the expansion of the definition of "point source" to include mobile and portable sources and the failure of EPA to consider de minimis or insignificant reporting thresholds, the proposal will require reporting of emissions from many activities and units at point sources for which there are no emission factors available in either AP-42 or WebFIRE. MOG believes that EPA emission factor criteria may lead to inconsistent emission calculations submitted to EPA and state agencies. In addition, many facilities have negotiated emission estimation methodologies with state agencies that, while technically supported, are nonetheless inconsistent with AP-42 factors and that could

lead to different emissions submitted to EPA and state agencies if EPA does not approve the use of source specific alternate emission estimate methods. The proposed revisions do not specified how EPA will treat HAPs that do not have an emission factor, resulting on the consumption of much time and effort on the part of both regulated sources and EPA in developing appropriate emission factors for which de minimus or even negligible emissions are expected. Finally, EPA states it is looking for best scientific data but precludes use of proprietary data, which may clearly be the best available data, because that data cannot be submitted as CBI without the risk of disclosure upon request.

MOG therefore requests EPA to clarify the method point sources will be required to use to determine emissions from extremely low emission level activities or units that have heretofore never been subject to HAP reporting requirements.

7. **EPA should not release EPRI Emission Factor and other confidential or proprietary documents that are not publicly available.**

The proposed revisions specifically define all data required to be reported as "emission data," noting that "…EPA proposes to add the determination that all data that parties are required to report under the revised AERR, including the data from the additional categories associated with emissions testing, is "emissions data" as defined at 40 CFR 2.301(a)(2)(i). As emissions data, the reported information is not subject to confidential treatment in accordance with CAA section 114(c), which provides for the public disclosure of such information. This proposed revision is intended to clarify that the EPA will not treat any data reported to the EPA under this rule (including the HAP data) as confidential in accordance with CAA requirements for emissions data and that entities who are responsible for reporting cannot withhold information based on claims of confidentiality." (88 Fed. Reg. at 54,164, emphasis supplied). EPA should not release EPRI Emission Factor or other confidential or proprietary documents that are not publicly available if requested and, in order to preserve security at critical electric infrastructure, MOG urges EPA to protect any confidential and proprietary information that may be reported as part of any final AERR revision.

7. The conflict between the revised definition of point source (e.g., inclusion of mobile and portable sources) and the reporting requirements of the revised AERR, TRI, and Green House Gas programs is unreasonable.

Owners and operators of sources are currently subject to emission reporting requirements under programs including, among others, the Toxic Release Inventory and Green House Gas reporting programs. For example, TRI regulations at 40 CFR 372.38(c)(4) exempts emissions from products used for maintaining motor vehicles operated by a facility and greenhouse gas reporting regulations at 40 CFR 98.30(b) exempt mobile and portable equipment, stating in the definition of stationary fuel combustion sources that "[t]his source category does not include: (1) Portable equipment, as defined in § 98.6. (2) Emergency generators and emergency equipment, as defined in § 98.6"

All such programs define emission types and sources that must be reported, but a common denominator in these programs is the characterization of points sources that are subject to the reporting obligations. The proposed revision to the AERR turn the commonly accepted definition of point source on its head by including mobile and portable emission units in the definition of "point source." This is unprecedented in the national scheme of air pollution regulation and will undoubtedly create conflicts in reporting requirements for owners and operators. MOG therefore objects to the inclusion of mobile and portable sources within the AERR definition of "point source" as unreasonable and beyond EPA's authority.

8. **EPA should not require submission of data to CEDRI.**

It is unreasonable for EPA to require the submission of performance tests to CEDRI. Under recent NSPS and NESHAP requirements, sources are already required to provide electronic reporting for affected facilities. However, this proposal would require performance testing conducted for many other emissions units. This would impose an unnecessary burden, requiring duplicative emissions data reporting that is already submitted as part of annual emissions reports.

9. **EPA should not require mandatory HAP reporting under both Combined Air Emissions Reporting System (CAERS) and State & Local Emissions Inventory System (SLEIS).**

The proposed rule requires that all emissions be reported using the CAERS database. (cite) This will result in many sources having to duplicate the time and expense of reporting because states aren't subscribed to CAERS. EPA has not justified the need for this requirement. The proposed revisions state that "[f]or the 2017 NEI, 76 out of 85 State/ local/tribal agencies reported point source HAP to EPA. These 76 agencies reported an average of 79 such pollutants. The EPA has found these voluntary reports to be insufficient and, therefore, they have been unable to meet EPA's needs for implementing CAA section 112. Because the section 112 regulatory work requires the most detailed HAP emissions data, we can reasonably conclude that the data for other HAP analysis products and needs described above are similarly incomplete. While the EPA has increasingly used TRI air emissions data to help fill reporting gaps for some uses of the NEI (e.g., national totals), these data do not have the sufficient detail necessary for detailed risk modeling and other assessment needs previously described." (88 Fed Reg 54,118 at 54,129)

EPA has not explained why 89% of the agencies reporting is insufficient and if the average of 79 pollutants of the 188 is representative of data for which emission factors exist. Are agencies not reporting HAP emissions or are the HAPs not reported not emitted or have no known emission factors available. For example, in AP-42 Section 3.3 and in Section 3.4, there are only 19 of the 188 HAP emission factors available for each chapter. EPA requires submittal of data for every HAP, but provides no guidance regarding a mechanism for reporting estimated emissions in instances for which no emission factor is readily available.

It is unreasonable to duplicate mandatory HAP reporting under both and SLEIS databases in states that aren't subscribed to CAERS and urges EPA to allow reporting using either system in states that aren't subscribed to CAERS in order to eliminate the duplicate efforts.

10. **PFAS should not be included as a required constituent because unless and until there is a final EPA approved test method.**

Any future proposal to include PFAS reporting because there is no approved air emissions PFAS testing method and given the lack of a de minimus reporting exemption, the expense of PFAS testing using any method is exorbitant, particularly for small sources. EPA should clarify in any final rule that the reporting requirements do not apply to any PFAS discharged to water.

11. **The proposed rule is unreasonable given that EPA has not and cannot provide a single dollar of benefit resulting from rule implementation versus the $477.9 million annual cost.**

EPA states (88 Fed. Reg. at 54,194) that "the proposed rule's total cost impact is estimated at $117.4 million on average annually from 2024 to 2026, and then is estimated at $477.9 million in 2027." EPA then states (88 Fed reg 54195) that "We have determined that quantification of benefits cannot be accomplished for this proposed rule." MOG notes that, at a cost of $477.9 million, the cost of this rule is more than 50% of the $900+ million cost of the proposed Federal

ozone transport rule, which would actually reduce emissions, while the proposed AERR does not. MOG objects to this aspect of as unreasonable. Moreover, MOG objects to any added regulatory requirement by EPA for which the agency concedes that it cannot provide any estimated benefits of the requirement being imposed on the regulated community.

12. EPA should implement any final AERR revisions in phases.

EPA acknowledges that the proposed revisions will apply to an estimated 129,500 facilities (88 Fed. Reg. at 54,136), the vast majority of which will be newly subject to HAP reporting requirements and, given EPA's failure to exclude reporting requirements for de minimis or insignificant sources, many will be small businesses that have never been subject to this kind of reporting requirement. In order to minimize the workload on the regulated community and EPA staff, MOG urges that EPA implement any final AERR revisions in phases.

13. Conclusion.

EPA's authority to require the monitoring and reporting of information is set forth in Section 114(a)(1) of the Clean Air Act which limits that authority to such information as the Administrator "may reasonably require". For the aforementioned reasons, it is clear that EPA has failed to demonstrate the reasonable nature of its proposal. EPA must therefore either withdraw the proposed AERR revisions or, in the alternative, modify any final rule to exclude mandatory reporting of insignificant or de miminis emissions, default to the traditional definition of point sources (i.e., exclude mobile and portable sources from the definition), protect critical electric infrastructure data from public disclosure, and implement any final AERR revisions in phases.

Very truly yours,

/s/ *Edward "Skipp" Kropp*

Edward "Skipp" Kropp
Steptoe & Johnson PLLC
Counsel for the Midwest Ozone Group