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NATIONAL STONE, SAND & GRAVEL ASSOCIATION

November 17, 2023

Re: Revisions to Air Emissions Reporting Requirements (AERR); 40 CFR Parts 2 and 51 [EPA-HQ-OAR-2004-0489-0092; FRL–8604–02–OAR]

To Whom It May Concern:

The National Stone, Sand & Gravel Association (NSSGA) respectfully submits these comments regarding the proposal for Revisions to Air Emissions Reporting Requirements (AERR). NSSGA is also a part of the AERR coalition and incorporates those comments by reference. NSSGA urges the U.S. Environmental Protection Agency (EPA) to reconsider this proposal. It will create great hardship for non-major sources under the Clean Air Act (CAA) like aggregates and not provide accurate data for the National Emissions Inventory (NEI). There are many unintended consequences to making such a large number of businesses, many very small, subject to proving a negative – that they do not exceed the very low limits for nearly 200 hazardous air pollutants (HAPs). This proposal adds significant burdens without a proven need. Should EPA move forward with this proposal, NSSGA urges EPA to exempt the aggregates industry due to (1) the low HAPs emissions, (2) the lack of any processes that process and/or produce HAPs for sale, (3) the facility locations distant from communities, and (4) the large number of small entities in the aggregates industry.

NSSGA is the leading advocate for the aggregates industry, which produces the stone, sand, and gravel (known as aggregates) needed for infrastructure and environmental improvements. Our members take natural, inert materials from the ground and size them to go into roads and important public works projects such as water delivery systems, flood control, wastewater treatment, and air purification systems. Unlike other types of mining, aggregates materials to be mined are chosen for having very

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low concentrations of heavy metals and other pollutants for use in concrete, asphalt, and cement. Even minor concentrations of metals are undesirable because they may react with the binder materials and cause the final product to be less resilient.

Regulatory compliance costs can impact operational costs, particularly for small businesses. These, in turn, impact the costs of infrastructure projects, which are largely borne by the taxpayer. NSSGA members work diligently to comply with regulations, and often go beyond what is required to improve their communities and the environment, such as creating wildlife habitats, wetlands for banking, parks, and other public areas. When NSSGA members must spend more to comply with cumbersome regulations and red tape, it impacts the resources our members have available to perform these voluntary and environmentally beneficial projects. This proposal will be very burdensome to small aggregate operations, none of whom are major sources nor familiar with HAPs data reporting, and would face high emission estimation costs and an especially steep learning curve concerning the regulatory requirements and EPA's database programs.

EPA Should Exclude NAICS Codes Representing the Aggregates Industry

In Section IV, A.8 of the Preamble, EPA includes a lengthy discussion concerning their interest in minimizing the burden of the proposed regulation on small entities such as restaurants, gas stations, and small auto body repair and painting operations. In the proposed Regulation Table 1C, EPA includes footnote 2 for NAICS Code 811121 (Auto Body Repair and Painting), which exempts small entities in this industrial category from the reporting requirements. EPA states on page 54135 of the August 9, 2023, Federal Register notice that "While the EPA utilized its technical discretion to exclude these NAICS-pollutant combinations at this time, the agency recognizes that it may be appropriate to revisit these exclusions in the future." NSSGA believes that it is appropriate and reasonable to make assessments from time to time to either add or exclude industries with numerous small entities.

The justification of this exemption for auto body repair shops applies equally well and perhaps even more strongly to the more than 9,000 aggregates operations with NAICS codes 212319, 212312, 212313, 212319, 212321, and 212322. Unlike auto body shops, the sand and gravel pits and quarries and rock crushing operations are in rural areas with significant buffers between their fence lines and the nearest neighbors, which are often farms, ranches or woodlands. Aggregates may be the only industrial operation

in these areas, so any small amounts of HAPs from mobile equipment are unlikely to be close enough to combine with other sources. Aggregate facilities use planted berms, undisturbed buffers, and substantial property line setbacks to further protect neighbors from fugitive dust and noise from the facilities. HAPs emitted from these sources are almost exclusively from offroad vehicles and small generators. Aggregate operations processes do not involve the direct purchase, direct handling, and/or direct production of hazardous materials; the materials handled and processed are distinctly inert materials like limestone and sand.

Analysis of the data from the Mine Safety Health Administration's (MSHA's) Mine Data Retrieval System (MDRS) shows that most aggregate providers are very small entities. There are well over 9,000 aggregate facilities in the US operated by over 4,000 companies. According to MSHA data obtained earlier this year, there are a total of 4,266 aggregate companies in the U.S. Of these, 3,685 or 86% of aggregates companies have 20 employees or fewer; 73% or 3,133 have less than 10 employees. Employees at aggregates operations often perform multiple jobs over the course of a day. Some are engaged in environmental activities such as collecting stormwater samples, operating water trucks to lower fugitive road emissions, and collecting data for reporting in existing systems. However, it is unlikely that any have experience with complex HAPs data, since the industry has never been subject to this reporting.

Aggregates are a high-volume, low-cost commodity, so the cost of hiring consultants, as well as employee involvement with measuring and reporting equipment use, is exceptionally burdensome to the aggregates industry. With this additional burden, it is possible that some small operations located closer to where the products are used will no longer be economically viable and close. If operations closer to where they are needed are shut down, aggregates, which are very heavy, would need to be transported further. This increase in distance not only significantly increases the costs of the material, but the act of increased transportation would also increase greenhouse gas and other emissions, including HAPs.

This proposed regulation is an extremely large expansion of a regulatory program that has previously been only oriented toward state and local agencies and tribal authorities. These agencies and authorities typically have experts in data management and decades of experience in this area; industries do not. Data included in the associated Technical Support Document and the preamble to the proposed regulation

indicate that EPA will require highly detailed and comprehensive reporting from more than 129,500 industrial facilities in the U.S. Each of these 129,500 sources will have numerous individual sources emitting very small quantities of HAPs. For each individual source, the proposed regulation will require emission data with process-related supporting data for more than 180 contaminants. This is a huge data gathering effort.

EPA itself has long recognized that the health risks from fugitive emissions are much lower than stack emissions. EPA evaluated fugitive emissions from mines early on in its CAA implementation, noting: "a large majority of the associated particulate matter is nonrespirable," "mining activity occurs in areas with limited population," "the particulate matter arises at ground level and falls out within very short distances," and "visibility is not affected because the light scattering which hinders visibility is caused by smaller particles."[1] When reevaluating if surface coal mines should count fugitives in determining major source status, EPA later decided that such emissions are already minimized by common practices, and further reduction efforts would not produce any benefits.[2] EPA has not shown the benefit of new onerous and complicated reporting requirements for coal mining emissions, let alone from much more inert and less harmful mining of common rock such as aggregates.

NSSGA believes that the exemption provided for auto repair shops was appropriate. We believe that the aggregates industry should be excluded at this time due to (1) the low HAPs emissions, (2) the lack of any processes that process and/or produce HAPs for sale, (3) the facility locations distant from communities, and (4) the large number of small entities in the aggregates industry.

<u>EPA Has Not Demonstrated a Basis for Requiring HAP Reporting from Aggregate Operations</u>

EPA's proposal cites Clean Air Act (CAA) Sections 114(a)(1) and 301(a) as authority for the HAP reporting requirements that the proposal would impose. The Act imposes two basic requirements for utilization of these authorities: (1) they must be reasonably related to the statutory purpose for which they are imposed; and (2) they must not be

[1] 43 Fed. Reg. at 26395.
[2] 54 Fed. Reg. at 48880.

unreasonably burdensome.[3] Further, EPA must demonstrate a reasonable basis for its actions to survive scrutiny under the "arbitrary and capricious" test for judicial review under Section 307 the Act. None of these requirements is satisfied with respect to EPA's proposal to require HAPs reporting from aggregate operations.

Statutory purpose: Aggregate facilities are not major sources of HAP emissions. With respect to non-major or area sources, Section 112(c)(3) of the Act directs EPA to regulate the categories of non-major sources that present the largest threat to public health in urban areas. Section 112(e)(2) directs that EPA's priorities must address the adverse effects, quantity and location of such sources. Section 112(k) directs EPA to develop a national strategy for reducing health risks from such sources. To date, no category of aggregate facilities has been listed by EPA for regulation as area sources pursuant to these provisions. This is because there has been no evidence that aggregate operations are sources of HAP emissions.[4]

In determining whether to list a category of sources for area source regulation, EPA historically has presented the information required under the Section 112 provisions described above. For example, in proposing to list the "paints and allied products" category, EPA stated:

> We listed the Paints and Allied Products Manufacturing area source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy. EPA listed this area source category for regulation pursuant to section 112(c)(3), based on emissions of the following six urban HAP: benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel (74 Fed. Reg. 26145, June 1, 2009).

As noted in this proposal, EPA's approach was based on the approach it took when developing its national strategy for area source regulation: EPA's current proposal provides no such data for aggregate operations, despite decades of EPA review of emissions from such

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[3] See, e.g., In re Investigation Pursuant to Clean Air Act, 42 U.S.C. 7401, 728 F. Supp. 626, 30 Env't Rep. Cas. (BNA) 2070, 20 Envtl. L. Rep. 21068, 1990 U.S. Dist. LEXIS 708 (D. Idaho 1990).

[4] Although aggregate facilities do include motor vehicles and nonroad vehicles, Section 112(a)(2) provides that emissions from these vehicles are not considered part of the source.

operations. EPA's NSPS for nonmetallic mineral processing plants (40 CFR Part 60, Subpart OOO), originally adopted in 1985 and reviewed periodically thereafter, gives no evidence of HAP emissions. It is based on production of a list of nonmetallic minerals, none of which are HAPs. Controls are limited to particulate emissions. Similarly, the AP42 emission factors for crushed stone operations, which describe such operations and their emissions in detail, do not give any indication of HAP emissions. This is because HAPs are not manufactured, processed. or used at such operations in any significant quantities. Accordingly, there is no historical evidence of HAP emissions from aggregate operations, and EPA has presented none here.

Undue burden. Given the absence of HAPs at aggregate operations, neither states nor facility operators have seen a need to develop techniques or protocols for measuring and reporting HAP emissions. EPA's proposal would now require them to do so, at great expense and with the knowledge that they ultimately are unnecessary because the facilities do not manufacture, process or use materials containing HAPs in any significant quantities. A rush to design reporting protocols for emissions that do not exist also carries the risk of substantial inaccuracy. This is the definition of an unnecessary and unduly burdensome reporting requirement.

In short, a HAP reporting requirement for aggregate operations would be extremely burdensome, and EPA has provided no evidence that it is necessary to effectuate the purposes of CAA Section 112. The NAICS Codes that address aggregate operations must be removed from the universe of facilities subject to reporting under the final AERR rule.

If EPA Does Move Forward with This Proposal, It Should be Limited to Major Sources

This effort should focus only on major sources, with the possible exception of those non-major sources that purchase HAPs as process raw materials, handle HAPs in their processes and/or produce hazardous chemicals for sale. Industries that potentially emit only small quantities of HAPs due simply to combustion of common fuels or other incidental operations should be excluded and only brought into the regulatory program when there is compelling data concerning the magnitude of the HAP emissions. As proposed, the comprehensive data from a very large number of small sources of incidental HAPs simply distract regulatory attention from the much smaller group of larger sources that have the highest probability of HAPs impact on communities.

This recommended change will reduce the burden on owners and operators of small entities, on states accepting HAP reporting requirements, and on EPA having to handle highly detailed information from as many as 129,000 industrial facilities. EPA could always add the excluded NAICS code facilities if future emission factor data suggest that these sources have emissions approaching or exceeding the low emission thresholds listed in Table 1B of Appendix A of Subpart A (Table 1B).

As it stands, EPA is essentially proposing to subject non-major sources of HAP emissions to the same burdensome requirements as major sources, which is inconsistent with how they are otherwise regulated (because their emissions levels are lower). Non-major sources are currently subject to less frequent and onerous reporting requirements, are subject to federal emission standards that are, for the most part, based on generally available control technology instead of maximum achievable control technology, and are generally subject to less stringent permit requirements than major sources, as set out by state, local and tribal regulators. EPA has not demonstrated why this drastic of a change of longstanding EPA policy is necessary.

<u>If EPA Wishes to Include Non-Major Sources, They Should be Phased In</u>

EPA should continue to allow state, local and tribal agencies to continue to determine whether any scrutiny should be placed on non-major source small entities, based on local air quality conditions and concerns per local risks determined by these agencies. As noted earlier, the majority of aggregates companies have 10 or fewer employees. EPA should look at the percentage of very small businesses as well as potential risk to receptors and if they are required to report, they should only be required after the largest, highest risk industries report. This would allow time for the highest risk industries with larger staff to work out any reporting issues and for EPA to address them, as well as develop tools for the smaller industries to report. This reduces the burden not only on industries but also EPA, state and local agencies, and tribal authorities.

The additional data needed to justify the future inclusion of industries like aggregates whose emissions are due to limited fuel combustion and other sources not related to the direct handling and production of hazardous chemicals can be identified through TRI data and other HAPs emissions data already being compiled by state and local agencies. This proposed regulatory program works much better if it is implemented in a logical step-by-step process that expands the regulatory scope only when clearly

justified by available emissions data. This proposed alternative approach minimizes the labor requirements on the part of agencies and industrial facilities and does not strain the available source testing and analytical laboratory resources necessary to handle the greatly increased need for data from major sources and those non-major sources handling and/or producing hazardous chemicals.

If EPA Does Move Forward with This Proposal, Portable Plants Should Be Excluded

EPA should exclude portable plants from this proposal. In some states, portable source air permits for production are tied to the portable source production and not tied to a physical site location. For example, a portable rock crusher will have a permit for the primary crusher and the associated air emission reporting is based on the throughput of the primary crusher for the year. Air emissions are not tracked by the physical location of production.

Data related to the production is kept at the portable source level and it will be very burdensome to break into physical site information when portable units may go to 20 or more sites in a year. As an example, a Midwest producer has had 32 portable crushers with permits and another 34 ancillary process portable units that were utilized at 185 different locations over an 18-month timeframe. Developing a tracking system to calculate air emissions will be complex and burdensome. The air emission calculations will be necessary for reporting purposes or for documentation of why reporting may not be necessary.

Complexity and burden will be added as a physical site may have one or more portable sources come onsite, which will further burden the record-keeping for compliance with the proposed changes and make an accurate emission estimate extremely difficult for businesses. Finally, this data reported to EPA would be different than that reported to the state agency, local agency, or tribal authority, and create unnecessary concerns from the public as to why the data are different.

If EPA Does Move Forward with This Proposal, Mobile Source Emissions Should Be Exempted

It does not appear that the MOVES4 program is designed or intended to be used by individual facilities to estimate their offroad vehicle emissions. It is also apparent that the use of the MOVES4 program will require a substantial time commitment by an

individual facility owner/operator or their consultant. EPA has not taken this substantial time commitment and cost into account.

For NSSGA member companies calculating the HAPs emission from offroad vehicles there are many other problems. Numerous factors affect the possible HAPs emission from mining vehicles such as the engine size, the Tier category of the vehicle, the presence or absence of controls such as diesel particulate filters, selective catalytic reduction systems, and recirculation. Operators of aggregate operations will have to compile substantial data to document the characteristics of each vehicle. No one speciation profile will be applicable to the large variety of offroad vehicles used at the aggregate operation. Furthermore, operators will have to find a means to document fuel use data per vehicle. Only then can they attempt to use the correct speciation profile identified emission factors to estimate emissions.

EPA Documents such as 420-R-22-013 are very cumbersome for even experts to utilize and these need to be updated to improve clarity of the procedures that could be used along with the Speciate database to calculate facility HAPs emissions for nonroad vehicles. Due to these numerous problems, EPA should not require individual facilities to track and report emissions from nonroad engines.

<u>If EPA Does Move Forward with This Proposal, It Should Fully Address the Burdens</u>

EPA has not only underestimated the costs, it has also failed to explain how this huge expansion provides benefits beyond already existing programs. Furthermore, EPA has offered no rationale for why, after decades of implementing the Clean Air Act, this burdensome rule is needed to fulfill its mission.

NSSGA noted earlier the many problems with calculating offroad emissions, but stationary emissions calculation is also burdensome. For those NSSGA member companies with stationary emission sources, EPA will require the submittal of air emission test data into the Electronic Reporting Tool (ERT). EPA has estimated 4 hours to enter the test data. This time estimate severely underestimates the effort for complicated tests. Very few sources, including major companies, submit their own test data to the ERT. They rely on consultants experienced in air emission testing. Even consultants require much more time than EPA has estimated. Data submittals for methods such as Method 23, 29, 201A, and 320 can require 8 to 12 labor hours per test even for experienced individuals who have modified their test method

spreadsheets to be compatible with the ERT database. Furthermore, many different emissions test methods will be needed to provide data concerning up to 180 different HAPs. This time requirement does not consider the new data requirements imposed to submit supporting process data, release coordinates, and control equipment operating parameters.

One NSSGA member estimates the time to be four times EPA's estimate due to the complexity of the requirements and unclear language around what information will need to be reported and to what level of detail. The unclear language and desire to tie emissions to a physical location will increase the potential for inaccurate data in the databases and increase the potential for non-compliance/penalties for small companies who may not have the resources to accurately meet the proposed AERR. It is unclear in the proposal how offroad engines will be addressed. Many facilities utilize common fuel storage for engines supplying power to equipment or generating electricity and offroad equipment. How does reporting a summed activity fuel use provide accurate and relevant data? If additional stack testing is needed to be undertaken to improve emission factors, these testing costs will be quite high. It is inherently difficult to test for extremely low levels of HAPs emissions in fugitive emissions not confined to a stack or emissions from very large nonroad vehicles.

Instead of imposing such a large, expensive burden on so many industries, EPA should work with states, local governments, and tribes when there are areas of cumulative risk from HAPs and address them in a targeted way. There is about $170 million in funding for air monitoring programs in the Inflation Reduction Act[5] and EPA should use this funding to address areas of concern before requiring thousands of very small businesses to report minimal HAPs emissions.

<u>Emissions Estimates Presents Serious Problems in Data Quality and Burden</u>

Every facility included in the NAICS codes listed has the obligation to estimate their HAP emissions to determine if they must report data to either their state, local or tribal agency or to EPA directly. The HAP emissions pose significant difficulties due to (1) the large number of HAPs listed in Table 1B and (2) the lack of emission data and/or representative emission factors. EPA's proposed regulation in §51.5 states that sources must develop their "new techniques for estimating emissions."

[5] https://www.epa.gov/inflation-reduction-act/delivering-cleaner-air

> "Where current the EPA guidance materials are outdated or are not applicable to sources or source categories, an owner/operator (other than a small entity, as defined by§ 51.50 of this subpart) should develop and document new techniques for estimating emissions, which should rely on any available source measurements applicable to the emissions source(s)."

The Speciate profiles 8775, 95333, and 95333a for offroad vehicles developed based on EPA's onroad engine test data are all limited to less than 60 of the more than 180 compounds in Table 1B. If, EPA has only been able to develop emission ratios for 60 HAP compounds during research programs over a 20-year period, it is not clear how individual industrial facilities will be able to develop emission factors for the remaining 120 HAPs in the next two years.

It appears that EPA is suggesting that in order to develop accurate, high-quality data, it would be necessary to test nonroad engines, especially the very large engines used in large capacity quarry trucks. It would also be necessary to develop testing protocols that consider the service conditions for offroad vehicles that can be quite different than the service conditions of onroad vehicles. It would take some time and considerable resources to even develop a realistic protocol for testing emission for offroad vehicles that are similar to the variety of tests conducted on onroad vehicle motors. Once a protocol is adopted, emission testing would be extremely difficult, extremely expensive, and extremely time consuming to quantify a very small amount of HAPs.

Should this be required, how will EPA evaluate the accuracy of emissions data using something other than an EPA emission factor or EPA reference method test values. What happens if EPA rejects the procedures used by a given source to estimate emissions of some of the 180 HAPs? What basis does EPA have for determining that the submitted evaluation method either underestimates or overestimates the actual emissions? Is there a legal consequence for submitting data based on a procedure that EPA rejects thereby causing the submittal to be voided? EPA fails to address these vitally important issues.

For these and other reasons, NSSGA recommends that EPA accept our request for an aggregate exemption as well as an exemption for mobile sources. Otherwise, at a minimum, before finalizing an inoperable rule and requiring each owner/operator to develop their own test data and/or emission factor data, EPA should sponsor research to determine the emissions of the missing HAPs from both onroad and offroad engines. If significant emission rates are found for one or more of these HAPs, the Speciate profile should be updated. This would give EPA a fuller picture of what are typical emissions and if moving forward with requiring AERR reporting as necessary. Until such a time, owners and operators of offroad vehicles should only be required to report HAPs emissions for those HAP compounds listed in Table 1B that EPA has published VOC and PM2.5-based HAP emission ratios. Organic HAPs compounds and elements not listed in Speciate profiles such as 8775, 95333, and 95333a should be assumed to be zero.

<u>EPA's Pledge of Emissions Tools for Small Entities Isn't Feasible in the Proposed Rule's Time Frame</u>

In Section IV, 13 of the August 9, 2023, preamble, EPA states that they intend to provide "emission estimation tools" to help small business entities compile emission estimates. These "tools" will reportedly be available at least 6 months before the first data submission is due. If the tool provided for aggregate industry sources is biased high or low or contains serious technical flaws, there will be insufficient time for the industry to compile the HAPs emission estimates required by EPA for the first submittal. It will also be very hard for an aggregate producing facility to determine if, in fact, it has emissions above any one of the thresholds for HAPs emissions.

This places a severe burden on small entities in the aggregate industry given the short time frame to evaluate emissions for more than 180 air pollutants listed in Table 1B of the proposed regulation. Accordingly, small entities in the aggregate industry will have to incur very significant costs in an attempt to provide emission estimates for more than 180 air pollutants from a wide variety of small sources on their facilities. EPA has seriously underestimated these initial evaluation costs.

It is also important to note that EPA does not mention the potential availability and use of EPA-provided "emission estimation tools" in the proposed regulation, despite the discussion of these "tools" in the preamble to the proposed regulation; therefore,

regulated entities will be required to report whether or not EPA is able to provide said tools in the time frame needed by facilities required to report.

Considering that there are more than 500 extremely diverse categories of small business in the U.S., it is hard to imagine how EPA will be able to produce such a variety of "tools" that are reasonably accurate and specific to each industry. Emission "tools" that estimate HAP emission factors that are too low or too high do not protect the public.

EPA should develop these emission tools as rapidly as possible and determine which industries have emissions of the HAPS well below Table 1B thresholds. These tools should be published by EPA prior to the inclusion of the industrial source category to the scope of the regulatory requirements. These industries should not be subject to the data submission requirements until these tools are available.

<u>If EPA Does Move Forward with This Proposal, HAP Thresholds Should be Reconsidered</u>
The participants in the Small Business Advocacy Review (SBAR) Panel commented that the HAP emission thresholds were too low. NSSGA agrees with the SBAR Panel regarding the excessively low Table 1B threshold values. Annual reporting of low emissions that barely exceed one of the thresholds will increase the labor time burden for owners/operators for a source that will rarely, if ever, be identified as a HAPs risk to a nearby community. It would be preferable to start this expanded AERR effort with higher annual thresholds and only lower the thresholds when future data demonstrates the necessity for the lower values. This would decrease the labor burden for owner/operators, state agencies, and EPA.

PFAs are clearly not a logical contaminant from diesel and gasoline-powered offroad equipment or from material handling processes such as rock crushing, screening, and aggregate material transport. If EPA moves forward with this regulation, it should be modified to allow an owner/operator of a specific facility or the trade association representing that industry to submit information that summarizes data and analyses demonstrating that PFAs and other specific HAPs are not logically emitted from that specific source or industrial category. EPA should review this documentation and

exempt specific facilities and/or industrial categories from reporting for these specific contaminants.

Confidentiality Issues Have Not Been Addressed Adequately

Section 51.5(n) combined with Section 51.35(b) of the proposed regulations states that all process data including throughput data provided with emission test data will not be considered confidential and will be publicly available. This requirement directly contradicts confidentiality requirements in many states. Furthermore, this requirement will place small business operators at a greater disadvantage in bidding on construction projects in that possible large competitors will have information concerning the production limits of a smaller competitor.

Some types of process data that are required to be submitted along with emission data are proprietary information that concerns process operating conditions developed by a source over many years. Releasing this information eliminates whatever competitive advantages that are gained by these research and development projects. Furthermore, it increases the risk of losing proprietary information due to invasive AI programs used by domestic competitors and foreign governments.

The proposed release of essential process data will significantly discourage the types of diagnostic tests often conducted by industrial sources to identify means to reduce both emissions and their operating costs. Industry sponsored diagnostic testing programs to reduce emissions will be significantly reduced, thereby resulting in higher long term air emissions.

If EPA needs confidential data, they can always request this information on an as needed, site-specific basis under Section 114 authority rather than requiring every facility to surrender its proprietary information to publicly accessible databases.

This Expansion of the AERR Program Needs More Consideration Before Finalizing

In its history, the AERR program has not required individual reporting by businesses. While we appreciate the comment period extension, this large expansion requires

more than a few months of consideration by industry to fully evaluate and meaningfully comment on entirely new reporting of 180 HAPs. While businesses must report only on those 180 HAPs that exceed the limits in the rule, the mere act of determining applicability is cumbersome, requiring new recordkeeping, evaluation, and estimation. This process should start with the Notice of Proposed Rulemaking (NPRM) so that industries can have more time to address these issues and provide meaningful feedback so that EPA can best target its and industries limited resources to the sources with greatest risk to communities. This proposal impacts how many businesses, particularly small businesses, will need to operate, and this comment period is inadequate for complete consideration. NSSGA appreciates EPA's willingness to meet with NSSGA and other industries during the comment period, but much more engagement is needed for a workable rule. EPA appears to indicate that no new testing is required for this rule. However, non-major sources have not been required to report or test for most of these constituents in the past, and EPA's emission factors databases are not complete for this purpose. For NSSGA to even begin to evaluate the impacts of this requirement on its members has already been a costly and burdensome endeavor.

NSSGA believes that EPA, state and local agencies, tribal authorities, and all industrial facilities have a shared interest in obtaining accurate and meaningful HAPs data. However, based on our review of the proposed regulation and the various related EPA documents, NSSGA concludes that this regulatory program is overly ambitious and will significantly strain the resources of regulatory agencies, industrial facilities, emission testing organizations, and analytical laboratories. Most importantly, this proposed regulation assumes that industrial facilities can, in just two years, fill the numerous significant gaps in the available EPA emission factor databases developed over the last 50 years. This is an unreasonable demand on industry resources. Our experience indicates that for the industry to even add existing testing data to EPA databases is a significant and costly undertaking that can take years.

The public is better served by a methodical data gathering and data evaluation program focused first on major sources and a limited number of non-major sources that purchase, handle, and/or produce HAPs. These are the sources most likely to impact public health. The regulatory program can be methodically expanded in scope to include other small sources that emit HAPs that present a risk to nearby communities. In this submittal, we are providing constructive comments for gathering

the necessary data in ways that minimize the burden on industrial facility owners/operators, state and local agencies, tribal authorities, and EPA.

In summary, NSSGA urges EPA to exempt the aggregates industry due to (1) the low HAPs emissions, (2) the lack of any processes that process and/or produce HAPs for sale, (3) the facility locations distant from communities, and (4) the large number of small entities in the aggregates industry.

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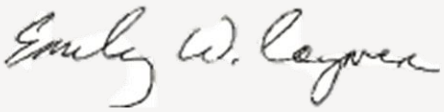
Sincerely,



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