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June 18, 2015

Environmental Protection Agency,
EPA Docket Center (EPA/DC),
Mailcode: 28221T
Attention Docket ID Number EPA-HQ-OAR-2009-0174
1200 Pennsylvania Ave. NW
Washington, DC 20460

Via email to: a-and-r-Docket@epa.gov

**Re: *Electronic Reporting and Recordkeeping Requirements for
New Source Performance Standards Proposed Rule – Docket
EPA-HQ-OAR-2009-0174***

Dear Sir or Madam:

On behalf of the Environmental Council of the States (ECOS), I submit this letter to the U.S. Environmental Protection Agency (hereinafter, “EPA” or “Agency”) on the proposed national rulemaking “*Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards*” (80 Fed. Reg. 15100, March 20, 2015). ECOS appreciates the opportunity to provide feedback on this proposed rule (hereinafter, “proposed rule”, “proposal”) and this letter summarizes the comments and concerns or issues that have been raised by our members.

The following comments from ECOS make broad suggestions that should be addressed by EPA in any final rule. Importantly, these comments do not supersede or alter the comments or opinions of any individual state.

ECOS encourages EPA to closely review and consider comments submitted directly by states on this rule.

**1. General Support for Electronic Reporting and Availability of
Electronic Data**

States have worked closely with EPA through the E-Enterprise for the Environment initiative and are supportive of efforts to move toward electronic reporting as cost-effective electronic reporting can provide benefits to federal and local regulators, the general public, and regulated facilities. Although this rule makes no mention of the E-Enterprise initiative, it is crucial that this e-reporting requirement conform to the beneficial elements of E-Enterprise’s core principles.

States believe that e-reporting, where feasible, can help with data entry burdens¹ and recognize that electronic storage of data makes reports more accessible for review, analysis, and sharing. ECOS and its members are supportive of transparency, clarity, comparability, and quality of environmental data. States also largely agree that “[e]lectronic reporting is in ever-increasing use and is universally considered to be faster, more efficient and more accurate for all parties once the initial systems have been established and start-up costs completed.”²

2. Permit Revisions

EPA indicates in the proposed rule that the e-reporting requirements may necessitate permit revisions, and that it anticipates revisions may be incorporated into Title V permits using the minor permit modification procedures or incorporated during renewal in the majority of circumstances in lieu of permit modifications. However, this proposed approach differs slightly from the “reopening for cause” provisions of 40 CFR 70.7(f) in that reopening for cause requires a full 30-day public notice process whereas minor modification procedures do not. EPA should clearly indicate within the final rule that changes to incorporate these revisions to NSPS requirements may be accomplished either through the Part 70 minor permit modifications procedures of 40 CFR 70.7(e)(2) or may be incorporated upon permit renewal consistent with 40 CFR 70.7(f)(i).

3. Sharing Data/Interoperability/System Upgrades

Some states have their own CROMERR-compliant electronic data systems. The interoperability between state systems and the Electronic Reporting Tool (ERT) should be carefully considered.

The proposed rule notes:

“Currently, the EPA's ERT is a Microsoft Access® application, and it is the only available tool to use in preparing performance test reports and performance evaluation reports for submittal to CEDRI. We are evaluating options for the development of a Web-based version of the ERT. We are, therefore, soliciting comment on whether we should develop this alternative ERT format as a reporting tool for performance test reports and performance evaluation reports.”

States have previously encouraged EPA to move this tool to a web-based service which would improve functionality. ECOS understands that with the current system, files are saved and e-mailed to states. This could be made more efficient and allow for greater data review and analysis if the information were housed in a web-based format. EPA should seek to move to a web-based ERT as soon as possible.

This rulemaking to require e-reporting may ultimately impact additional reporting universes including similar rule changes for Maximum Achievable Control Technology (MACT) Standards(MACT) standards, National Emission Standards for Hazardous Air Pollutants (NESHAP), and Title V. If EPA plans to continue to expand the number of impacted facilities, EPA should work from a web-based platform at the earliest opportunity. This would build a community of practice while also building state staff expertise. State staff would be able to gain experience with how the web-based reporting platform works when it applies to a smaller number of entities. Prior to more facilities being added, states could gain experience, would be more prepared to respond to questions from reporters, and would have practice retrieving needed information following reports from regulated facilities.

¹ ECOS Resolution 13-4, Environmental Performance Data and Metrics (approved September 18, 2013).

² 80 Fed. Reg. 15108.

Any upgrades to ERT should include consideration of facilitation and streamlining of data exchanges between states and EPA.

Some states have shared reports from regulated entities that ERT is difficult to navigate and to complete needed reporting. Regulated facilities are required to enter data, some of which is repetitive. Ongoing conversations within the E-Enterprise initiative include the Facility Registry Service (FRS) and the E-Enterprise portal. There may be opportunities to link ERT to these tools so that facility data might be pre-populated to reduce burden and to increase user satisfaction as well as state access to data.

4. Training Support

The proposed New Source Performance Standards (NSPS) mandates electronic submission of stack test results by regulated facilities using EPA's ERT.

EPA should seek to first upgrade ERT to a web-based platform prior to mandating electronic reporting for a larger universe of facilities. This would allow new electronic reporting for facilities to begin with the new platform rather than beginning in one format and then having to switch to another platform in the future. If a requirement to report to ERT is made prior to an upgrade, facilities, and by extension states that provide compliance assistance, would need to become familiar with and support both the Access and future web-based versions of ERT. While larger facilities may be able to seek contractor support, medium and smaller sources may have to rely on in-house staff expertise.

So that all states may become familiar with this tool and provide appropriate assistance to facilities using ERT, ECOS recommends that EPA provide adequate training and instruction materials for the revised reporting method³. This may include preparing and scheduling outreach events to include recorded webinars or other engagements that seek to provide an overall review of ERT, the information it will collect, how states would retrieve information reported through this system, and other information.

Aligning the requirement for electronic reporting with the upgraded web-based ERT would limit the need for additional training on both the current Access-based system as well as the web-based format.

For states with existing electronic systems, EPA should work with these states to understand how information may be exchanged among states and EPA to increase benefit of this new reporting requirement. EPA should also include information on data exchanges between states and EPA in related training.

EPA notes in the proposed rule that “[t]he owner or operator must begin submitting reports via [the Compliance and Emissions Data Reporting Interface or] CEDRI no later than 90 days after the form becomes available in CEDRI.” 80 Fed. Reg. 15117. This may not be sufficient amount of time for staff from states and regulated entities to become trained in and transitioned to the new reporting system and its functions. EPA should consider a longer phase-in period for the regulated community.

³ ECOS Resolution 13-4.

5. Duplicative Reporting

States appreciate EPA's efforts to modernize environmental information reporting. EPA should strive for any new reporting requirement to not create additional or duplicative burden for regulated entities.

The proposed rule supplementary information notes (bold added):

“We are aware that some air agencies have already developed electronic reporting systems. **If the air agency's reporting system can be developed or amended such that it can upload all required data elements to the EPA's CEDRI, the delegated air agency's reporting system could serve as third-party software.** In this case, [the reporting entity] would submit ... performance test or performance evaluation report to the delegated air agency through the delegated air agency's software, and the air agency's system would allow [the reporting entity] to also submit the report to the EPA's CEDRI through the air agency's system.”

The Part 60 Standards of Performance for New Stationary Sources would be amended to state (bold added):

§ 60.4

Address.

(b) Section 111(c) directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards of performance for new stationary sources located in such State. Indian tribes which have obtained treatment in the same manner as a state (TAS) for that purpose may also be delegated such authority. **All information required in this part to be submitted to the EPA, must also be submitted in paper format to the appropriate State or Tribal Agency of any State or Tribe to which this authority has been delegated (the delegated authority) unless the delegated authority specifies another format.** Information submitted in paper format must be postmarked no later than the date that the report is required to be submitted to the EPA's CDX electronically. Any information required to be submitted electronically by this part via the EPA's CDX may, at the discretion of the delegated authority, satisfy the requirements of this paragraph. **Each specific delegation may exempt sources from certain Federal or State reporting requirements under this part, with the exception of Federal electronic reporting requirements under this part. Sources may not be exempted from Federal electronic reporting requirements.**

Information is required to be submitted to the delegated state. The proposed rule also notes that specific delegation authority may exempt sources from certain reporting requirements “with the exception of Federal electronic reporting requirements under this part. Sources may not be exempted from Federal electronic reporting requirements.”

EPA should add language to the proposed rule to make clear the flexibility offered in the supplementary information does not conflict with the statement that, “[s]ources may not be exempted from Federal electronic reporting requirements.”

Additionally, states may require through delegation agreements that facilities report to the state. Unless a delegation agreement is amended, if the proposed rule requires reporting to EPA, this would increase reporting requirements.

Even if delegated agreements were amended to change reporting requirements, states may require additional information to be reported. If electronic reporting to ERT is mandatory and does not cover all state needed elements, this proposed rule could establish a duplicative reporting requirement, cause confusion for facilities that would have two reports for the same permit requirement with different form specifications and possibly different reporting cycles. EPA should clarify in the final rule how it intends to accommodate collection of any supplemental state-specific information required per state rules and regulations from regulated entities for states which opt to

use EPA's ERT system as a means of satisfying state reporting requirements. This would prevent some circumstances of duplicative reporting.

As the e-reporting requirement will become part of permits, all facilities will have to comply with this requirement and certify compliance with it. Therefore, some facilities that otherwise fulfill their emission obligations may fail to comply with the NSPS simply because they did not electronically submit their reports to EPA. EPA should clarify whether this e-reporting requirement is for information gathering only, without enforcement implications. If EPA intends to see this e-reporting requirement enforced against non-complying facilities, EPA needs to provide in its final rule whether the enforcement authority will be delegated to the state, local or tribal agency.

Another option for EPA's consideration is to allow for the use of a single electronic system – likely the state's system where it meets certain requirements. A potential model comes from EPA Region 5 which has previously agreed that the reporting provisions in 40 C.P.R. § 70.6(c)(5)(iv) requiring that all compliance certifications be submitted to both EPA and the permitting authority were met by sending such submissions to Region 5 authorized state permitting authorities (except Michigan), provided that the e-reporting system met certain specific requirements.⁴ Allowing electronic submission to a state to fulfill the new NSPS e-reporting mandate would ensure federal access to electronically-submitted documents while giving more flexibility to the states that have already developed or plan to develop their own e-reporting system.

6. Required Data Elements

States encourage EPA to work together to streamline data requirements and to consult with states regarding the proper metrics and interpretation of statutorily-required data.⁵ ERT collects data that states may already collect through other reporting mechanisms. ERT may also collect additional information such as latitude/longitude data that may not have been previously collected. Careful consideration of what must be reported in ERT and alignment with existing state systems should be built into this effort.

7. Continuous Improvement of ERT

ECOS recommends that EPA work with states to improve data accuracy, streamline data requirements, and facilitate data exchanges. As experience is gained from use of ERT, EPA should develop a mechanism to track suggested improvements to the system from states and regulated entities and to prioritize upgrades working with states and regulated entities. EPA should provide a mechanism for improvement suggestions to be easily shared. The list of possible improvements should be periodically made available to states so that state staff may be made aware once problems have been identified and informed that EPA has been notified of a particular concern.

8. Notification of Upgrades or Expansions to ERT

The proposed rule notes that the list of test methods and performance specifications currently supported by the ERT will expand over time.⁶ It will be important that notification of upgrades be

⁴ See 79 Fed. Reg. 54978. See also, Letter from George Czerniak, Director Air and Radiation Division, EPA Region 5, to Scott Nally, Director, Ohio Environmental Protection Agency, December 10, 2013.

⁵ ECOS Resolution 13-4.

⁶ The proposal provides that:

done in a way that is easy to track, comprehensive, and searchable. A listserv or update to a webpage is not sufficiently comprehensive. States with their own reporting systems may need to change their own schema to reflect EPA ERT system upgrades. ECOS encourages EPA to work with states on an appropriate notification mechanism that provides for sufficient lead time for states to make any needed upgrades.

9. Release of Data

States desire that transition toward electronic reporting of environmental data be successful. States encourage EPA review closely the recommendations issued by the Compliance and Emissions Data Reporting Interface (CEDRI) Integrated Project Team (IPT) and ensure consensus recommendations are fully included. It is not clear whether the proposal fully captures the consensus recommendations, for instance, providing a 120-day review period for ERT Performance Test Reports and restricting public access to the reports until states, local, and tribal agencies' review is complete. It is important that the final rule align with the final report recommendations.

The proposal states that the data sources submit to EPA's CEDRI will become publicly available after 60 days, during which time delegated agencies will have the opportunity to review it. ECOS understands that data that has not yet been reviewed will not include any sort of flag or caveat to indicate that it has not been examined. Therefore, if a delegated agency is unable to review the data during the 60-day period, it will automatically become publicly available and the public will have no way of knowing that the information has not been quality assured or otherwise reviewed by the delegated agency. Such a situation could lead to unnecessary misinformation, confusion and concern on the part of the public and extra effort for sources and governmental agencies to correct the data after the public release. Ideally, EPA would not make the data in CEDRI available to the public until the delegated agency has had the opportunity to review it and work with the sources to ensure it is of high quality. At the very least, EPA should ensure that if unreviewed data must be released to the public it includes clear caveats to let the public know that it has not been evaluated as was consensus recommendation by the Integrated Project Team (IPT) final report.⁷ Further, this 60-day period is in conflict with the new ICIS enforcement database requirements, which sets forth a 120 time limit for report review. EPA should clarify for states how (if at all) these two time limits interact and which one they are expected to meet.

States enter review and approval of data through ICIS. If states must review and approve of data in ERT, this could be a duplication of data entry. EPA should work with states to see if information in ERT could flow to ICIS and alleviate any possible double entry issues.

Again, this letter, though submitted on behalf of states, in no way overrides individual comments and concerns made through the rulemaking process by states - our members and your co-regulators. We encourage you to consider state comments carefully.

“When we add new methods and performance specifications to the ERT, a notice will be sent out through the Clearinghouse for Inventories and Emissions Factors (CHIEF) Listserv (<http://www.epa.gov/ttn/chief/listserv.html#chief>) and a notice of availability will be added to the ERT Web site. We encourage you to check the Web site regularly for up-to-date information on methods and performance specifications supported by the ERT.” 80 Fed. Reg. 15104.

⁷ Compliance and Emissions Data Reporting Interface Integrated Project Team Guidance and Recommendations Document, Version: 1.0, Revision Date: September 26, 2013.

If you have any questions, please contact me at adunn@ecos.org or 202-266-4929. We thank you for the opportunity to provide input on this proposed rule, and look forward to our conversation and to their eventual finalization.

Sincerely,

A handwritten signature in blue ink, reading "Alexandra Dapolito Dunn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alexandra Dapolito Dunn
ECOS Executive Director and General Counsel

cc: John Stine, ECOS Air Committee Chair
Tom Burack, E-Enterprise for the Environment State Co-Chair
Andy Putnam, Exchange Network State Co-Chair