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The Honorable Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Request for Administrative Reconsideration EPA's Final Rule "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources"

Dear Administrator McCarthy:

The following trade associations hereby submit this petition for administrative reconsideration of the final rule entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," published at 81 Fed. Reg. 35824 (June 3, 2016) ("Subpart OOOOa" or "Methane NSPS"). We request that you take the time to review what and who these trade associations represent and not simply jump to the issues we are seeking reconsideration of. Many of these trade associations have been around since or before the 1950s. The trade associations represent the "independent" exploration and production companies – from the "mom and pop" operations to some of the larger producers in the country – but that is all they do and it is all they know. Subpart OOOOa, as finalized, will have a disproportionate impact on independents and especially independents that constitute "small business" under the Regulatory Flexibility Act. The issues raised in this petition fall into two categories: 1) issues that are entitled to reconsideration under Section 307(d)(7)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7607(d)(7)(B), where it is impracticable to raise an objection during the period of public comment or if the grounds for such an objection arise after the public comment period (but within the time specified for judicial review), and if such objections are of central relevance to the outcome of the rule; and 2) issues the independents commented on, either through their trade association or as an individual company, that the U.S. Environmental Protection Agency ("EPA" or "Agency") failed to address in the final rule and that will have devastating impacts to the exploration and production segment of the industry if not addressed.

The national and state level trade associations joining in and filing this petition for reconsideration, collectively referred to as the "Independent Associations," are described below.

The Independent Petroleum Association of America ("IPAA") is an incorporated trade association that represents thousands of independent oil and natural gas producers and service companies across the United States that are active in the exploration and production segment of the industry, which often involves the hydraulic fracturing of wells. IPAA serves as an informed

voice for the exploration and production segment of the industry, and advocates its members' views before the United States Congress, the Administration and federal agencies.

The American Exploration & Production Council ("AXPC") is an incorporated national trade association representing 29 of America's largest and most active independent oil and natural gas exploration and production companies. AXPC members are "independent" in that their operations are limited to exploration for and the production of oil and natural gas. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the energy business, such as downstream refining and marketing. AXPC members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce oil and natural gas, both offshore and onshore, from non-conventional sources in environmentally responsible ways.

The Domestic Energy Producers Alliance ("DEPA") is a nationwide collaboration of 25 coalition associations, representing about 10,000 individuals and companies engaged in domestic onshore oil and natural gas production and exploration. Founded in 2009, DEPA gives a loud, clear voice to the majority of individuals and companies responsible for enduring work to secure our nation's energy future.

The Eastern Kansas Oil & Gas Association ("EKOGA") is a nonprofit organization founded in 1957 to become a unified voice representing the unique interests of eastern Kansas oil and gas producers, service companies, suppliers and royalty owners on matters involving oil and gas regulations, safety standards, environmental concerns and other energy related issues.

The Illinois Oil & Gas Association ("IOGA") was organized in 1944 to provide an agency through which oil and gas producers, land owners, royalty owners, and others who may be directly or indirectly affected by or interested in oil and gas development and production in Illinois, may protect, preserve and advance their common interests.

The Independent Oil and Gas Association of West Virginia, Inc. ("IOGA-WV"), is a statewide nonprofit trade association that represents companies engaged in the extraction and production of natural gas and oil in West Virginia and the companies that support these extraction and production activities. IOGA-WV was formed to promote and protect a strong, competitive, and capable independent natural gas and oil producing industry in West Virginia, as well as the natural environment of their state.

The Indiana Oil and Gas Association ("INOGA") has a rich history of involvement in the exploration and development of hydrocarbons in the State of Indiana. INOGA was formed in 1942 and historically has been an all-volunteer organization principally made up of representatives of oil and gas exploration and development companies (operators), however, it has enjoyed support and membership from pipeline, refinery, land acquisition, service, supply, legal, engineering and geologic companies or individuals. INOGA has been an active representative for the upstream oil and gas industry in Indiana and provides a common forum for this group. INOGA represents its membership on issues of state, federal, and local regulation/legislation that has, does and will affect the business of this industry. INOGA is a

501(c)(6) trade association incorporated as Non-Profit Domestic Corporation under the statutes of Indiana.

Since 1940, the International Association of Drilling Contractors ("IADC") has exclusively represented the worldwide oil and gas drilling industry. IADC's contract-drilling members own most of the world's land and offshore drilling units that drill the vast majority of the wells producing the planet's oil and gas. IADC's membership also includes oil-and-gas producers, and manufacturers and suppliers of oilfield equipment and services. Through conferences, training seminars, print and electronic publications, and a comprehensive network of technical publications, IADC continually fosters education and communication within the upstream petroleum industry.

The Kansas Independent Oil & Gas Association ("KIOGA") is a nonprofit organization founded in 1937 to represent the interests of oil and gas producers in Kansas, as well as allied service and supply companies. Today, KIOGA is a trade association with over 4,200 members involved in all aspects of the exploration, production, and development of crude oil and natural gas resources.

The Kentucky Oil & Gas Association ("KOGA") was formed in 1931 to represent the interests of Kentucky's crude oil and natural gas industry, and more particularly, the independent crude oil and natural gas operators as well as the businesses that support the industry. KOGA is comprised of 220 companies which consist of over 600 member representatives that are directly related to the crude oil and natural gas industry in Kentucky.

The Michigan Oil And Gas Association ("MOGA") represents the exploration, drilling, production, transportation, processing, and storage of crude oil and natural gas in the State of Michigan. MOGA has nearly 850 members including independent oil companies, major oil companies, the exploration arms of various utility companies, diverse service companies, and individuals. Organized in 1934, MOGA monitors the pulse of the Michigan oil and gas industry as well as its political, regulatory, and legislative interest in the state and the nation's capital. MOGA is the collective voice of the petroleum industry in Michigan, speaking to the problems and issues facing the various companies involved in the state's crude oil and natural gas business.

The National Stripper Well Association ("NSWA") was founded in 1934 as the only national association *solely* representing the interests of the nation's smallest and most economically-vulnerable oil and natural gas wells before Congress, the Administration and the Federal bureaucracies. It is the belief of NSWA that producers, owners, and operators of marginally-producing oil and gas wells have a unique set of needs and concerns regarding federal legislation and regulation. NSWA is a member based trade association with nearly 800 members nationwide across 43 states.

The North Dakota Petroleum Council ("NDPC") is a trade association representing more than 590 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, and storage, as well as mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky

Mountain Region. Established in 1952, NDPC's mission is to promote and enhance the discovery, development, production, transportation, refining, conservation, and marketing of oil and gas in North Dakota, South Dakota, and the Rocky Mountain region; to promote opportunities for open discussion, lawful interchange of information, and education concerning the petroleum industry; to monitor and influence legislative and regulatory activities on the state and national level; and to accumulate and disseminate information concerning the petroleum industry to foster the best interests of the public and industry.

The Ohio Oil & Gas Association ("OOGA") is a trade association with over 2,600 members involved in all aspects of the exploration, production, and development of crude oil and natural gas resources within the State of Ohio. OOGA represents the people and companies directly responsible for the production of crude oil, natural gas, and associated products in Ohio.

Founded in 1955, the Oklahoma Independent Petroleum Association ("OIPA") represents more than 2,500 individuals and companies from Oklahoma's oil and natural gas industry. Established by independent oil and natural gas producers hoping to provide a unified voice for the industry, OIPA is the state's largest oil and natural gas association and one of the industry's strongest advocacy groups.

The Pennsylvania Independent Oil & Gas Association ("PIOGA") is a non-profit corporation that was initially formed in 1978 as the Independent Oil and Gas Association of Pennsylvania ("IOGA of PA") to represent the interests of smaller independent producers of Pennsylvania natural gas from conventional limestone and sandstone formations. Effective April 1, 2010, IOGA of PA and another Pennsylvania trade association representing conventional oil and natural gas producers, Pennsylvania Oil and Gas Association ("POGAM"), merged and the name of the merged organization changed to its present name. PIOGA's membership currently is approximately 500 members: oil and natural gas producers developing both conventional and unconventional formations in Pennsylvania; drilling contractors; service companies; engineering companies; manufacturers; marketers; Pennsylvania Public Utility Commission-licensed natural gas suppliers ("NGSs"); professional firms and consultants; and royalty owners. PIOGA promotes the interests of its members in environmentally responsible oil and natural gas operations, as well as the development of competitive markets and additional uses for Pennsylvania-produced natural gas.

The Texas Alliance of Energy Producers ("Texas Alliance") became a statewide organization in 2000 with the merger of two of the oldest oil & gas associations in the nation: the North Texas Oil & Gas Association and the West Central Texas Oil & Gas Association. The Texas Alliance is now the largest statewide oil and gas association in the country representing Independents. With members in 34 states, the Texas Alliance works on behalf of our members at the local, state, and federal levels on issues vital to the industry.

The Texas Independent Producers & Royalty Owners Association ("TIPRO") is a trade association representing the interests of 3,000 independent oil and natural gas producers and royalty owners throughout Texas. As one of the nation's largest statewide associations representing both independent producers and royalty owners, members include small family businesses, the largest, publicly-traded independent producers, and mineral owners, estates, and

trusts. Members of TIPRO are responsible for producing more than 85 percent of the natural gas and 70 percent of the oil within Texas, and own mineral interests in millions of acres across the state.

Chartered in 1915, the West Virginia Oil and Natural Gas Association ("WVONGA") is one of the oldest trade organizations in the State, and is the only association that serves the entire oil and gas industry. The activities of our members include construction, environmental services, drilling, completion, gathering, transporting, distribution, and processing.

The Independent Associations respectfully request the Agency reconsider the following issues.

A. SECTION 307(D)(7)(B) RECONSIDERATION ISSUES

1. The low production well (15 barrels of oil equivalent ("boe")/day) exemption from leak detection and repair ("LDAR") and reduced emission completions ("RECs") requirements should be reinstated in the final rule and the requirements regarding low production wells should be stayed pending reconsideration.

In the proposed rule, EPA sought comment on and proposed to exclude low production wells (i.e., those with an average daily production of 15 barrel equivalents or less per day) from REC and LDAR requirements. 80 Fed. Reg. 56633-34, 56639, 56665 (Sept. 18, 2015). The trades representing the independents uniformly supported the low production well exemptions. Based on the preamble discussion of the low production well exemption, EPA listened to, understood, and accepted the arguments and comments set forth by "small entities" during the Small Business Advocacy Review Panel ("Panel") process, in compliance with Section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). Small entity representatives ("SERs"), including trade associations that are part of this petition, met with the Panel, which included EPA personnel, on May 19, 2015, and June 18, 2015, and submitted written comments. The SERs' message was clear – the potential REC and LDAR requirements would be the most onerous aspect of any additional controls on their operations. The SERs explained how and why these potential requirements would disproportionality impact small entities. The SERs explained the physical differences associated with low production wells (e.g., primarily pressure and volume) and the marginal profitability of low production wells. EPA seemed to "get it" and stated in the preamble:

> We believe the lower production associated with these wells [low production wells] would generally result in lower fugitive emissions. It is our understanding that fugitive emissions at low production well sites are inherently low and that such well sites are mostly owned and operated by small businesses. We are concerned about the burden of the fugitive emission requirement

> on small businesses, in particular where there is little emission reduction to be achieved.

80 Fed. Reg. 56639. Numerous oil and natural gas trade associations, including many of the parties to this petition filed comments in support of the exemptions and the rationale behind them.

Despite the information provided to EPA during the SBREFA process and Final Report of the Panel, EPA reversed course in the version of Subpart OOOOa and did not provide the low production exemption from either the REC or LDAR requirements. In the preamble to Subpart OOOOa that "one commenter" stated that low production wells have the "potential" to emit high fugitive emissions; "another commenter" stated that the LDAR survey should be conducted quarterly or monthly; and "one commenter" provided an estimate that a "significant" number of wells would be excluded under the low production well exemption. What appears to be EPA's principal reason for reversing course is that

> [S]takeholders indicated that well site fugitive emissions are not correlated with levels of production, but rather based on the number of pieces of equipment and components. Therefore, we believe that the fugitive emissions from low production and non-low production well sites are comparable.

81 Fed. Reg. 35856. EPA's rationale, that fugitive emissions are a function of the number and types of equipment, and not operating parameters such as pressure and volume, is inconsistent with EPA's justification for what constitutes a "modification" for an existing well site. EPA assumes that fracturing or refracturing an existing well will increase emissions because of the additional production, i.e., the additional pressure and volume. EPA cannot ignore the laws of physics to the detriment of low production wells in one instance and then "honor" them in another context to eliminate an "emissions increase" requirement in the traditional definition of "modification."

The estimation or correlation of fugitive emissions with the number or types of components at low production versus non-low production wells was not discussed during the Panel process nor was comment sought by EPA in the proposed rule. If EPA proposed to correlate fugitive emissions at low production well sites with the number or types of components – in place of operating parameters such as line pressure and volume, independents would have been put on notice that additional information and comments were needed on the issue. No such comment was sought and EPA rationale and revocation of the low production well exemption is confounding. An administrative stay of the REC and LDAR requirements to low production wells is warranted pending outcome of the reconsideration proceeding. Although the effective date of the requirements has been extended 180 days, the impact of the regulations is immediate on low production wells. The marginal profitability will mean that many wells will be shut in instead of making the investment to conduct LDAR surveys. Similarly, low production wells that are currently in the planning stage will be reevaluated to take into consideration the

additional costs of RECs and it is likely that the plans to drill many wells will be scrapped. For the reasons set forth above, it is appropriate for EPA to grant reconsideration of this issue.

2. The requirement in Section 60.5375a of Subpart OOOOa that requires a separator be "onsite during the entirety of the flowback period" was not part of the proposal and imposes an unnecessary cost on many conventional wells drilled by independents.

From the inception of the Subpart OOOO rulemaking, independent operators have informed the Agency that operating parameters during flowback of certain hydraulically fractured wells, often what is referred to as "conventional" wells, are such that a separator does not "work" – or as EPA has focused on is not technically feasible. EPA initially seems to understand this point and states:

> … we do not have sufficient data to consistently and accurately identify the subcategory or types of wells for which these circumstances occur regularly or what criteria would be used as the basis for an exemption to the REC requirement such that a separator would not be required to be onsite for these specific well completions. In order to accommodate these concerns raised by commenters, the final rule requires a separator to be onsite during the entire flowback period for subcategory 1 wells (i.e., non-exploratory or non-delineation wells, also known as development wells), but does not require performance of REC where a separator cannot function. We anticipate a subcategory 1 well to be producing or near other producing wells. We therefore anticipate REC equipment (including separators) to be onsite or nearby, or that any separator brought onsite or nearby can be put to use. For the reason stated above, we do not believe that requiring a separator onsite would incur cost with no environmental benefit.

81 Fed. Reg. 35881. Independent Associations take issue with the conclusion that requiring a separator onsite throughout the entire flowback period would incur no cost. The cost of having the separator on site is a significant cost and could be a limitation on the operations of certain operators. The existing regulations make clear that a separator must be utilized during the separation flowback stage and EPA has increased the record keeping and monitoring associated with the different stages of flow back. In addition to these requirements, there is the general duty clause to reduce emissions. The requirement to have a separator onsite throughout the flowback process is an unnecessary cost to many independent operators that provides no economic benefit. The proposed rule did not contemplate requiring a separator to be onsite throughout the flowback process and in fact inferred just the opposite. For the reasons set forth above, it is appropriate for EPA to grant reconsideration of this issue.

3. Subpart OOOOa added a variety of requirements associated with "technical infeasibility" that were not purposed or even mentioned in the proposed rule

that increase the cost of compliance with disproportionally impacts on independent operators.

While the Agency has appropriately accepted the concept that it is not technically feasible to implement certain controls, EPA added a number of requirements in Subpart OOOOa that were not proposed or discussed in the proposed rule:

- The final rule requires that Professional Engineers ("PE") certify connections of pneumatic pumps (§60.5393a) or closed vent systems (§60.5411a(d) are not technically feasible at brownfield sites. The certification by a PE will add considerable cost with no demonstrated benefits. As with many of these requirements. the independent operators do not have the ability in-house to meet these requirements and are dependent on third-party contractors. As EPA pushes the envelope on new/additional requirements, economies of scale favor the larger operators and to the extent the contractors are available for hire, it comes at a premium cost for the smaller entities and/or independent operators.
- Without discussion in the proposed rule, the Agency has also removed the "technical infeasibility" option for controls at "greenfields." Neither the proposed rule nor Subpart OOOOa define what constitutes a brownfield versus a greenfield. At some point in time a greenfield becomes a brownfield. Not only does the proposed rule fail to mention the concept of brownfield versus greenfield, Subpart OOOOa fails to provide any differentiation.
- The additional recordkeeping requirements added in Subpart OOOOa, at end of §60.5420a(c)(1)(iii)(A), associated with technical infeasibility, which were not part of the proposed rule, demonstrates that the Agency fails to understand that such requirements disproportionally impact small entities and many independent producers and operators.

The additional requirements associated with technical infeasibility were not only not addressed in the proposed rule, but the Agency failed to consider and address the disproportionate impact they would have on independent operators.

B. <u>ADDITIONAL ISSUES IN NEED OF REVISION</u>

The following issues were arguably addressed in some manner during the SBREFA and/or notice and comment process, but based on a review of the record, the Independent Associations believe they warrant additional discussion. The Independent Associations will provide the Agency additional information on these issues of concern.

1. The definition of "modification" as it relates to refractured wells and the LDAR requirements needs to be clarified and changed. The refracturing of wells does not necessarily mean emissions will increase. Emissions must increase to meet the NSPS definition of modification. As currently defined, Subpart OOOOa would unjustifiably subject "existing sources" that have not necessarily been modified to extensive and costly requirements.

2. Certain oil wells should be exempt from the LDAR requirements. Similarly, there should be a different definition of "low pressure well."

3. There should be an "off ramp" for the LDAR requirements when existing wells or new wells become "low production" or marginal wells.

4. Although Subpart OOOOa provides a state equivalency process for LDAR programs, the procedure set forth in the regulations (§60.5398a) is overly burdensome to the point that states are unlikely to avail themselves of the provisions.

5. The digital/video LDAR related requirements (§60.5420a) are unnecessary and should be removed.

6. EPA should reinstate options to reduce the emission surveys to annual surveys. While certain operators might prefer the consistency of bi-annual surveys, many independent operators and small entities would still benefit from the ability to reduce survey frequency by demonstrating few/no leaks during consecutive surveys.

7. Extended implementation periods are necessary and warranted for small entities that lack the bargaining power and resources (and the in-house capabilities) to contract with consultants to undertake the surveys, testing and documentation required by Subpart OOOOa. .

As indicated above, the Independent Associations will provide additional information on the issues raised above. In the interim, if the EPA has any questions or concerns, please do not hesitate to contact me.

Respectfully submitted,

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Counsel to the Independent Associations

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