From: ECOS
To: Minoli, Kevin
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Subject: ECOS Seeks Nominations for Secretary-Treasurer, Wyoming Governor Confirmed for Fall Meeting, & More

ECOSWIRE

Friday, July 14, 2017

Vol. 19 No. 27

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ECOS Seeks Nominations for Secretary-Treasurer

Executive Committee Representatives for Even Regions Also Sought

ECOS is seeking nominations for the position of Secretary-Treasurer. Interested ECOS members should send an expression of interest by **August 4** to President John Linc Stine of Minnesota and copy Executive Director Alexandra Dunn. Self-nominations are appropriate. Please note "ECOS Secretary-Treasurer Nomination" in the subject line. Officer Voting will be conducted by electronic ballot until **September 11**, the first day of the ECOS Fall Meeting.

Also at the Fall Meeting, states from even-numbered U.S. EPA Regions will elect new representatives to the Executive Committee. Under ECOS' bylaws, the current regional representative may not be re-elected to the position. States in even-numbered regions should caucus amongst themselves to identify and elect their representative and report it to Alexandra Dunn before or during the meeting. If you are emailing your decision, please note "ECOS Executive Committee Regional Representative" in the subject line. The terms for all positions begin following the Fall Meeting. [Dunn/Parisien]

Wyoming Governor, Park Superintendent Confirmed for Fall Meeting

New Agenda Available; States Should Also Plan to Attend September 13

Wyoming Governor Matt Mead is the newest keynoter confirmed for the 2017 Fall Meeting in Jackson Hole, Wyoming on *Bright Ideas: States Leading the Way*, for which early bird registration runs through **August 4**. Attendees also will be welcomed to the meeting by David Vela, Superintendent of Grand Teton National Park. A new agenda has been posted.

The interactive program ties together a number of cutting-edge ECOS initiatives of interest to a variety of stakeholders. Among the highlights, ECOS will feature outstanding programs selected for 2017 State Program Innovation Awards (see related story), unveil a new dashboard that states can use to better protect human health and the environment, and explore early wins in its Cooperative Federalism 2.0 campaign to forge an improved state-U.S. EPA partnership.

U.S. EPA officials already confirmed to attend are Assistant Deputy Administrator & Chief of Operations Henry Darwin, Senior Advisor to the Administrator for Regional & State Affairs Ken Wagner, and Acting Deputy Administrator Mike Flynn. Former ECOS member Collin O'Mara (Delaware), now President & CEO of the National Wildlife Federation, also will deliver a keynote address. And sure to be a highlight of the meeting is an evening

excursion to Grand Teton National Park.

The public portion of the Fall Meeting runs all day September 11 and 12, with **states-only sessions planned until 11:15 a.m. on September 13**. These discussions will be followed by the E-Enterprise for the Environmental Leadership Council Meeting on the afternoon of September 13 and morning of September 14 until 11:30 a.m.

Attendees should make their **hotel reservations as early as possible** to take advantage of the lower of two ECOS group rates ($199 for hotel rooms versus $289 for larger accommodations). ECOS room nights include September 10, 11, and 12, with limited availability on the nights of September 13 and 14. When using the hotel reservation link, please note that Policies listed on the first reservation page apply to ECOS but that Terms & Conditions listed on a subsequent page do not apply. The special ECOS group rates are available until **August 9** or sellout of the room block, whichever is sooner.

See the Fall Meeting website for the agenda, online registration, hotel reservation link, hotel overflow suggestions, ground transportation options, and special events in Jackson listing. For more information about the agenda, sponsorship opportunities, or the hotel, contact Lia Parisien of ECOS. For additional registration information, contact Sarah Grace Longsworth of ECOS. [Parisien]

ECOS Seeks Nominations for Special Recognition Award

The ECOS President gives the ECOS Special Recognition Award annually to a member agency staff member whose dedication and contributions over a sustained period lead to the meaningful advancement of an ECOS priority during his or her tenure as President. ECOS currently is seeking nominations from its members for the 2017 award, which will be presented at the September 11-12 Fall Meeting in Jackson Hole, Wyoming. Please send your nominations to Alexandra Dunn of ECOS by **July 21.** The ECOS officers will make the final selection.

The 2016 Special Recognition awardee was Ken Zarker of Washington for his tireless work with states, Congress, and others related to reforming the Toxic Substances Control Act and his dedication to efforts to reduce toxics in the environment. In 2015, Andy Putnam of Colorado and Chris Simmers of New Hampshire received the recognition for their dedication to ECOS through involvement in and leadership of the Exchange Network and E-Enterprise. [Parisien]

Nominations Being Accepted Thru July 21 for New Round of ECOS Innovation Awards

New Request: Please Include Contact Information with Submissions

Each year, ECOS honors outstanding state initiatives with State Program Innovation Awards. The association will present a new round of awards at our **September 11–13** Fall Meeting in Jackson Hole, Wyoming.

If you have a successful new innovation to share, please send a write-up of approximately one page in Word that includes the items in the model below (which was one of last year's winning entries), including contact information. ECOS is particularly interested this year in innovations in the areas of permit streamlining and business process improvement, community outreach and engagement, and land revitalization and reuse. Nominations need not be confined to these areas, however, and are not given more weight in the selection process. Please send submissions to Megan Swanson by July 21.

In addition to receiving consideration for recognition and presentation at the Fall Meeting, submissions will be published in a special edition of *ECOS Green Report*. [Swanson]

Model Innovation Nomination
Virginia's Wetland Monitoring and Assessment Program

Description of Initiative:
Virginia has approximately one million acres of wetlands. An estimated 75 percent of these acres are palustrine vegetated wetlands, and the remaining 25 percent are estuarine wetlands. Virginia is believed to have lost about 40 percent of its original complement of pre-colonial wetlands. A study of wetland trends in Southeastern Virginia for 1994-2000 showed a net loss of 2,100 acres (1.3 percent). The actual loss of vegetated wetlands was even higher, but offset by a gain in pond and open water area.

The loss of palustrine wetlands was primarily due to conversion to uplands, while estuarine wetlands were lost through conversion to open water. Major causes of wetland loss in Virginia include conversion to other land cover types, ecosystem service modifications associated with climate change, hydrologic alterations, invasive species, fragmentation by development, crop fields, roads, fences, berms, and eliminated ecosystem services, notably habitat and water quality.

The Virginia Department of Environmental Quality (DEQ) and the Virginia Institute for Marine Science have developed a robust, science-based Wetland Monitoring and Assessment Strategy for evaluating the condition of wetlands in the Commonwealth. The overarching goal of Virginia's strategy is to devise a long-term implementation plan for a wetland monitoring and assessment program that protects the physical, chemical, and biological integrity of the Commonwealth's water resources, including

wetlands.

In order to accomplish this goal, it is critical to first know the status of wetland resources in Virginia, in terms of location and extent of wetlands in each watershed, and have a general knowledge of the quality of these wetland resources. Second, the functions of wetland resources impacted through the permitting program must be accurately evaluated to determine those functions to be replaced through compensatory mitigation. It is also important to assess the degree to which the required compensatory mitigation is performing in relation to those impacted functions. The assessment method is a multi-service model that involves three levels of data collection. The method characterizes the capacity of the wetland to provide water quality and habitat services using remotely sensed data. The model application produces a relative score for each wetland for each service. The scores are then refined and calibrated by site visits to randomly selected wetlands. The relationship between structure and function is validated by intensive study of ecological service endpoints.

Results to Date:
The data collected from the assessment have been compiled into an online GIS-based wetland data viewer identified as the Wetland Condition Assessment Tool (WetCAT). WetCAT can be used to evaluate wetland condition over time, make better permitting decisions relative to cumulative impacts, avoid and minimize wetland loss, evaluate performance of compensatory wetland mitigation in replacing wetland acreage and function, and evaluate the effectiveness of the regulatory program.

Virginia's wetland monitoring and assessment program is being implemented with funds awarded through U.S. EPA's Wetland Program Development Grants to continue these efforts. DEQ has received nine grant awards from EPA for this initiative, and Virginia is recognized as one of five states leading this initiative nationally.

Contacts:
David L. Davis, CPWD, PWS
Director, Office of Wetlands & Stream Protection
Virginia Department of Environmental Quality

Michelle M. Henicheck, pWS
Senior Weland Ecologist
Virginia Department of Environmental Quality

ECOS Prepares for STEP 2017

ECOS' 2017 State Environmental Protection (STEP) meeting will take place this Monday, **July 17**. The interactive one-day gathering, themed *Reframing our Environmental Future,* will center on ECOS' *Cooperative Federalism 2.0 Paper*, released last month. See the agenda for a full list of speakers, panels, and further details. Breakfast, lunch, breaks, and a reception will be provided at the meeting. We look forward to seeing our members and friends there! [Longsworth]

House Markup of U.S. EPA FY18 Budget Reverses Some of President's Proposed Cuts

On July 12, the House Appropriations Subcommittee for Interior, Environment, and Related Agencies, which covers U.S. EPA, released its markup for an FY18 appropriations bill. The bill funds EPA at $7.5B, 7 percent or $528M below FY17 enacted levels and $1.9B above the President's FY18 budget request. Some budget highlights affecting states include:

- STAG funding totals $3.29 billion, a $240M reduction from FY17 enacted levels and $360M above the President's FY18 budget request.
- STAG grants that see increases in the bill are Diesel Emissions Reduction grants (25%), Brownfields Projects Grants (13%), and Targeted Airshed Grants (33%). Funding for Mexico Border grants is eliminated.
- The Clean Water SRF account is funded at $1.143B, down $250M or 18% below the FY17 enacted level; Drinking Water SRF funding is unchanged.
- Categorical grants to states and tribes remain flat-funded at $1.07B, with specific callouts for the Brownfields, Exchange Network, UST, and CAA sec 106 Water Quality Monitoring grant programs.
- The House bill proposes rescissions of $60M from the STAG account, $27M from the Science & Technology account, and $36M from Environmental Programs & Management.

The legislation includes funding for buyouts and voluntary separation agreements, an authorization for the EPA Administrator and the Secretary of the Army to withdraw the Waters of the United States rule, and funding prohibitions on greenhouse gas reporting and ozone NAAQS. [McAleer]

Senate EPW Advances Bodine Nomination

The Senate Committee on Environment and Public Works on July 12 voted 11-10 to advance the nomination of Susan Bodine to serve as Assistant Administrator for the U.S. EPA Office of Enforcement and Compliance Assurance. No date has been set for a full Senate vote.

During Bodine's recent confirmation hearing before EPW, Senator Bernie Sanders (I-VT) had probed the nominee about how she would handle EPA's proposed budget cuts and the emphasis on state environmental protection. Bodine responded that she agreed with ECOS' recent Cooperative Federalism 2.0 paper outlining a vision for EPA and states to work collectively to protect the environment and public health.

More information about the Wednesday's vote can be found here. [Harrison/Parisien]

U.S. EPA Releases Proposed Rule on WOTUS

U.S. EPA has released a pre-publication version of the proposed rule for "Step 1" of the process to replace the Obama-era Clean Water Rule. This first step is to reinstate policies that were in effect prior to finalization of the Clean Water Rule, and the proposed rule rescinds the definition of "waters of the United States" and replaces it with the definition used prior to issuance of the 2015 Clean Water Rule.

EPA also has released an economic analysis of the proposed rule.

The proposed rule is expected to be published in the *Federal Register* shortly. [Piper]

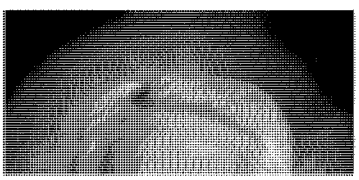
State News You Can Use

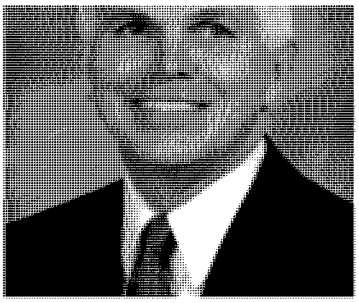
New York Marks Invasive Species Awareness Week

Texas Shares Tips on Living Sustainably

Member Spotlight

Two Minutes with Bill Ehm, Division Administrator, Environmental Services Division, Iowa Department of Natural Resources





What's your current job?
I lead the Environmental Services Division of the Iowa Department of Natural Resources (DNR).

How long have you been Division Administrator? What's your best experience thus far?
I have been in this position for six years. I have been a strong proponent of LEAN in our Department. It has been very rewarding to watch our staff and customers find better ways to accomplish our goals and make everyone's work easier and more focused at the same time.

How has being a member of ECOS benefitted you?
Besides making some great friends, I have appreciated learning how other states do the same business as Iowa, but in varied ways. I have brought many ideas back home to be incorporated into our work at DNR.

What is the best management advice you've received?
"Care more about the people you have than for the ones you wish you had."--Chuck Gipp, DNR Director

CONTINUED HERE

Need-to-Know News in Cooperative Federalism & Water

Cooperative Federalism 2.0 Document Featured on 'States at the Table' Website

Area of Focus: Cooperative Federalism

ECOS' Cooperative Federalism 2.0 document is featured on the States at the Table webpage, a joint project of the Council of State Governments and the Association of Air Pollution Control Agencies to provide an online comprehensive resource for state leaders from all three branches of government on opportunities to interact with federal energy and

environmental agencies through Federal Advisory Committees (FACs).

By providing timely information on meetings, activities, and openings with FACs of interest, States at the Table seeks to promote federalism on environmental and energy issues and to provide interested state officials opportunities to engage with their federal counterparts. The site focuses on FACs of interest at U.S. EPA and the U.S. Department of Energy, National Oceanic and Atmospheric Administration, and U.S. Department of Interior. [Swanson]

U.S. EPA Invites Comment on Proposal to Withdraw CWA Restrictions for Pebble Mine

Area of Focus: *Water*

U.S. EPA on July 11 proposed to withdraw its July 2014 Clean Water Act Proposed Determination that would, if finalized, have imposed restrictions on the discharge of dredged or fill material associated with the potential Pebble Mine in Alaska's Bristol Bay watershed. The agency, which is seeking public comment on the proposal, is consulting with federally recognized tribal governments of the Bristol Bay region and with Alaska Native Claims Settlement Act Regional and Village Corporations with lands in the Bristol Bay watershed.

Public comments must be received on or before 90 days from the date of publication of the *Federal Register* notice. Comments will be accepted by email to ow-docket@epa.gov with docket number EPA-R10-OW-2017-0369 in the email subject line.

Read the pre-publication *Federal Register* notice. [Parisien]

ITRC

Interstate Technology and Regulatory Council

ITRC Launches New Streamlined Website

ITRC is pleased to announce the launch of its new website. The new layout is more user-friendly and streamlined, and staff can't wait to see what the ECOS and ITRC communities think.

Please feel free to contact ITRC with any comments or suggestions. Your thoughts are welcome and appreciated! [Bodi]

ERIS

ERIS/ORD Meeting in Oklahoma

The Environmental Research Institute of the States (ERIS) Board and U.S. EPA's Office of Research and Development (ORD) convened in Oklahoma City for its annual joint meeting this week.

On Tuesday, ERIS board members, ORD staff, and executive employees of the Oklahoma Department of Environmental Quality (DEQ) drove to the Robert S. Kerr Environmental Research Center, ORD's Groundwater, Watershed, and Ecosystem Restoration laboratory in Ada, Oklahoma. Roundtable discussion covered topics including research needs, state-federal partnerships, and updates on pilot programs like C-FERST and the wildfire smoke guide. Lab scientists also provided a tour of the Kerr facilities and brief overviews of their current projects. In the evening, DEQ staff introduced meeting attendees to a Village Green Bench, a project in Oklahoma City's Myriad Botanical Gardens that measures air quality and weather conditions in real-time using new technologies built into a solar-powered park bench.

DEQ hosted the Board and ORD staff at their offices on Wednesday to conclude the meeting. The agency detailed Oklahoma's environmental challenges, and meeting attendees discussed prominent issues like perfluorinated chemicals and risk communication, and next steps for ERIS and ORD.

Oklahoma DEQ Executive Director Scott Thompson (top right) and ERIS Board Members at EPA's Village Green Bench in Oklahoma City's Botanical Garden. Top Row: Paul Mercer (ME), Bob King, Thompson; Bottom Row: ERIS President David Paylor (VA), Martha Rudolph (CO), and Bill Holman.

Upcoming Events

Calls

TIME CHANGE: ECOS, US EPA on FY 2018-19 Draft NPM Guidance Documents

ECOS' Call with EPA's Office of Water (OW) on their FY18-19 NPM guidance has been rescheduled to take place an hour earlier than originally planned. The call will now occur next Thursday, **July 20th at 2-3 p.m. Eastern**. The conference call information is: 1-866-299-3188; Code: 202-564-0516. (Please note, the agenda that was originally distributed for this call listed an incorrect access code for the conference line. The code listed above is correct).

In late June, U.S. EPA has released its draft National Program Manager (NPM) Guidance documents for fiscal years (FY) 2018-19. The documents are available for public comment until **July 28**. This week, ECOS' Partnership and Performance Workgroup held calls with three other EPA program offices- OAR, OLEM, and OECA- to discuss their FY18-19 guidance documents.

States should send comments to Owen McAleer of ECOS by July 21 to be considered in ECOS' input on the guidances. Please contact Owen with any questions. with any questions. [McAleer]

Webinars

ITRC on Groundwater Statistics for Environmental Project Managers

An upcoming ITRC online training and associated technical document will bring clarity to the planning, implementation, and communication of groundwater statistical methods, and should lead to greater confidence and transparency in the use of groundwater statistics for site management. The training will be held **July 18 at 1-3:15 p.m. Eastern**.

Learn more and register here. [Bodi]

U.S. EPA on Beta ECHO Biosolids Data

U.S. EPA has developed an Enforcement and Compliance History Online (ECHO) facility search form for the NPDES Biosolids data coming in with the 2016 implementation of the NPDES eReporting Rule. U.S. EPA has begun collecting Biosolids Annual Reports electronically in the 42 states where it implements the federal Biosolids Program. The search allows for customized search, sort, and download of biosolids data for the first time. States are invited to see a demonstration of this feature and provide feedback prior to release to the public.

Questions on which EPA seeks feedback on are:

- Can you find the biosolids data you're seeking?
- Are there places in the search form that don't make sense?
- Once there are multiple years of annual report data available, how do you want to search and view these results?

To join a webcast on the topic on **July 19 at 1-2 p.m. Eastern**, call (866) 299-3188 and enter passcode 2025645960#. The webcast link is here.

For more information, including information on how to test the biosolids search prior to the webinar, contact Rebecca Kane at (202) 564-5960. [Graves]

U.S. EPA on ECOTOX

U.S. EPA will hold its monthly Tools and Resources Webinar on **July 19 at 3-4 p.m. Eastern**. The webinar will focus on ECOTOXicology, a comprehensive, publicly-available knowledgebase that provides chemical environmental toxicity data on aquatic life, terrestrial plants, and wildlife.

State environmental and health agencies, tribes, local governments, communities, stakeholders, and others interested in learning about predicting chemical toxicity and potential exposure effects should register here. [Longsworth]

ITRC on Geospatial Analysis for Optimization at Environmental Sites

Optimization activities can improve performance, increase monitoring efficiency, and support site decisions. Project managers can use geospatial analysis for evaluation of optimization opportunities. Unlike traditional statistical analysis, geospatial methods incorporate the spatial and temporal dependence between nearby data points, an important factor for data collected as part of an environmental investigation.

This ITRC course on **July 25 at 1-3:15 p.m. Eastern** will train state regulators and other practitioners in understanding and using geospatial analyses.

Learn more and register here. [Bodi]

U.S. EPA on Water Issues

U.S. EPA has two ongoing webinar series addressing clean water and small water systems. The Office of Research and Development (ORD) hosts a series on water research, with the following monthly webinars scheduled:

- **August 30** - Nutrients: Weatherizing, Salinization, and Evolution of Urban Water
- **October 25** - Life Cycle Assessment as a Decision Support Tool

More information on the water research webinar series, including how to register, is available here.

In addition, ORD and the Office of Water host a monthly webinar series on small drinking water systems. Their schedule for the rest of the year is:

- **July 25** - Water Loss and Distribution System Infrastructure: Leak Detection and Cost Savings
- **August 29** - Treatment and Control for Manganese and Iron
- **September 26** - Small Systems Research DeRISK Center
- **October 31** - State Acceptance of UV Disinfection Technologies
- **November 28** - Lead in Schools and Selecting Lead Free Fixtures
- **December 12** - Residual Chlorine and Calibration Check for Chlorine Instruments

More information on the small systems webinars, including recordings of past webinars and how to register, is available here. [Hanson]

U.S. EPA on C-FERST

U.S. EPA's Office of Research and Development (ORD) will host a Community-Focused Exposure and Risk Screening Tool (C-FERST) training session for ECOS and Association of State and Territorial Health Officials (ASTHO) members on **July 26 at 1-3 p.m. Eastern**. The webinar will feature slides with presenter scripts and a detailed demonstration to aid state environmental staff and health directors who are not confident in using C-FERST themselves in training others to use the tool.

ECOS and ASTHO have been working with ORD on EPA's C-FERST tool, which provides information to help users identify and learn about environmental issues in their communities, and explore exposure and risk reduction options.

If you are interested in joining, please email Sarah Grace Longsworth of ECOS. [Longsworth]

ECOS and U.S. EPA on Compliance Research

A Compliance Research Webinar Series hosted by U.S. EPA OECA's NETI and designed for ECOS members and EPA will help program administrators understand how collaboration with academics can identify effective and measureable approaches to compliance. In each of five webinars, social and behavioral scientists from top universities will present research findings on compliance monitoring, rule and permit design, reporting and transparency, and innovative enforcement. Following the presentations, participants will discuss program initiatives that can be put to the test through collaboration with academics.

The introductory webinar was held June 27. The other webinars will be held as follows:

- Monitoring – **August 9, 3-4:30 p.m. Eastern**
- Rule and Permit Design – **September 28, 2-3:30 p.m. Eastern**
- Reporting and Transparency – **October 24, 2-3:30 p.m. Eastern**
- Innovative Enforcement – **November (TBD)**

For more information, please contact Sonia Altieri of ECOS. [Altieri]

Visit ECOS.org

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To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: ECOS
Sent: Fri 3/31/2017 4:43:08 PM
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President Trump Signs Sweeping Order to Launch Review of CPP & Other Rules

On March 27, President Trump signed a wide-ranging Executive Order (EO) on Promoting Energy Independence and Economic Growth (EO). The EO directs federal agencies to: take appropriate actions to promote clean air and clean water while respecting the "proper roles" of the Congress and the states; reassess all regulations and take the necessary steps to modify or rescind any rules that place an undue burden on the power sector; and suspend, revise, or rescind the Clean Power Plan (CPP) and other U.S. EPA and U.S. Department of Interior rules following agency review. The order also revokes a number of EOs signed by former President Obama; ends the requirement that federal agencies consider climate

change risks to their missions, programs, and facilities; directs the Council on Environmental Quality to rescind its guidance on incorporating climate change analysis into National Environmental Policy Act reviews; disbands the Interagency Working Group on the Social Cost of Greenhouse Gasses, rescinds the federal government's "social cost of carbon" metric; and lifts moratoria on coal leases on federal lands.

While there is a great deal of information in the EO, the portion covering reconsideration of the CPP has garnered much of the initial attention. As with any final rule, U.S. EPA must follow the Congressional Review Act in its review, which requires the agency to complete a formal rulemaking and address facts already in the administrative record.

Legal challenges to the outcome of this process are likely. Led by the New York Attorney General, the Attorneys General of California, Connecticut, Delaware, Hawaii, Illinoi, Iowa, Maine, Maryland, Massachusetts, Minnesota New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia this week issued a press release vowing to "protect those we serve" in regards to the threats of climate change. Colorado and Pennsylvania leaders also have issued statements in opposition to the EO.

As pointed out in the EO, the U.S. Department of Justice has petitioned the U.S. Court of Appeals for the D.C. Circuit to hold in abeyance its review of the CPP (*West Virginia v. EPA*, D.C. Cir., No. 15-1363, *motion filed* 3/28/17) while the new leadership at EPA reviews it. CPP supporters are expected to file formal opposition to DOJ's request to halt the litigation late next week.

However, in a letter to Governors on March 30, EPA Administrator Scott Pruitt reiterated that states are not "required nor expected" to comply with the CPP. While this does not change the regular course of business pending the Supreme Court stay of the CPP, Administrator Pruitt did go on to say, "To the extent any deadlines become relevant in the future, case law and past practice of EPA supports the application of day-to-day tolling." He added, "The days of coercive federalism are over." [Poole]

Georgetown Climate Center Tracks State Response to Executive Order

Following President Trump's signing of this week's Executive Order (see related story), the Georgetown Climate Center created a database to track state responses. While many states are supportive of the EO, there are also Governors who have pledged to continue moving forward in the realm of climate change adaptation and clean energy exploration.

To track the diverse state responses, visit the Georgetown Climate Center's webpage. [Poole]

White House Sends FY17 Budget Request to Congress with $247M in U.S. EPA Cuts

As Congress prepares to negotiate funding by April 28 for the remainder of FY17, the White House Office of Management and Budget (OMB) sent a memo on Friday to lawmakers proposing that cuts be taken from several agencies under the upcoming FY17 appropriations bill. Cuts are proposed from five U.S. EPA programs: Categorical Grants ($115M /10%), Office of Research and Development ($48M), Brownfields Project Grants ($5M), Great Lakes Programs ($49M), and Superfund Remedial ($30M). The memo describes some EPA cuts intended to "ease" the affected programs into larger

reductions for FY18.

The cuts from EPA and other agencies offset proposed funding increases in Defense and Homeland Security, including increases to fund the construction of a southern border wall. The OMB proposal likely will meet resistance on the Hill due to its inconsistency with budget caps imposed by a 2015 spending agreement.

Amid the White House's recent budget activity, states have expressed concern over cuts that would affect delegated programs. On March 30, the National Governors' Association sent a letter to congressional leaders to this effect. Earlier this month, ECOS President John Linc Stine of Minnesota and ECOS staff met with House and Senate appropriations staff to discuss the status of the EPA budget for FY17. [McAleer]

House Hears Benefits of Brownfields Reauthorization

The U.S. House Subcommittee on Water Resources and Environment, chaired by Rep. Garret Graves (R-LA), held a hearing March 28 on a revitalizing American communities through the Brownfields Program.

With new legislation to reauthorize Brownfields expected soon, the subcommittee was especially interested to hear about the benefits of Brownfields programs in communities across the nation, both urban and rural, as well as key areas of focus for future legislation. Rep. Graves questioned participants about the private-public partnerships that are created through Brownfields programs, while Ranking Member Grace Napolitano (D-CA) asked how an increase in funding could drive positive outcomes.

Amanda LeFevre, Outreach and Education Coordinator at the Kentucky Brownfield Redevelopment Program, speaking on behalf of the Association of State and Territorial Solid Waste Management Officials, highlighted the small town resources offered through 128(a) program funding. The support of local community officials in the preparation of grant applications and the workshops provided for organizations, communities, and others are among the important benefits of this funding, LeFevre noted.

On April 4, the House Subcommittee on Environment and the Economy will hold a hearing on Brownfields Reauthorization at which former ECOS President Robert Martineau, Commissioner of the Tennessee Department of Environment and Conservation, will testify on behalf of ECOS. More information on that hearing can be found here. [MacCartney]

House Passes Bill Barring U.S. EPA from Using Science Not Publicly Available

On March 29, the House of Representatives passed the Honest and Open New EPA Science Treatment Act (HONEST Act) by a vote of 228-194. The bill, one of many recent efforts aimed at reining in government regulations, prohibits U.S. EPA from writing any rule that uses scientific studies and data not publicly available.

The While House and congressional Republicans believe the bill will ensure sound science and reduce regulatory costs, whereas congressional Democrats assert that the HONEST Act will leave EPA unable to implement important regulatory protections because the agency might not be allowed to release some data underpinning them.

The bill, similar to the Secret Science Act passed in previous Congresses, also requires that scientific studies be replicable and that redacted personal or trade information in data be viewable to those who sign confidentiality agreements. [Longsworth]

ECOS Seeks States to Pilot ECOS Measures Project

The ECOS Measures Project, launched in 2016, is creating a dashboard that states can use to better communicate to the public their efforts to protect human health and the environment. This will be a web-based tool, not inviting comparison by state, but allowing each state to graphically tell its story using common measures which have been selected through a robust state-led process through ECOS' Planning Committee and in coordination with AAPCA, NACAA, ASTSWMO, ACWA, and ASDWA.

ECOS Planning Committee Vice Chair Bill Ehm of Iowa will provide an update on the project next week at the ECOS Spring Meeting. ECOS currently is recruiting 15 states to be pilots for this effort. States that have already agreed to be pilots are Arkansas, Colorado, Hawaii, Iowa, Nebraska, Tennessee, Virginia, and Wyoming.

States interested in piloting the project are who would like more information are asked to please email Connor MacCartney of ECOS. [Altieri]

ECOS Wants to Hear about State Plans for Earth Day Festivities

How is your state celebrating Earth Day? If your agency is hosting an event, advertising environmentally friendly practices on social media, or promoting the day in another way, ECOS wants to hear about it.

This year, ECOS is compiling a list of the “Top 10” state Earth Day initiatives. Please send information on efforts that your state has underway for Earth Day **by April 14** to Sarah Grace Longsworth of ECOS. [Longsworth]

State News You Can Use

Ohio Approves First-of-its-Kind Wetlands Pilot

Mississippi Set to Issue Daily Ozone Forecasts

Need to Know News in Emerging Contaminants & ITRC

ECOS Holds TSCA Workgroup Call on DoD's Emerging Contaminants Program and Thermostat Recycling

Area of Focus: *Chemicals and Emerging Contaminants*

ECOS on March 30 held its monthly Toxic Substances Reduction Workgroup call. The Department of Defense's (DoD) Dr. Tricia Underood, Deputy for Chemical and Material Risk Management in the Office of the Deputy Assistant Secretary of Defense, first shared a presentation on DoD's Emerging Contaminants Program. She detailed DoD's start to the program, which included collaboration with ECOS on three White Papers, and described how science experts identify chemicals of potential risk to the Army and public.

Ryan Kiscaden, Executive Director of the Thermostat Recycling Corporation, then presented on the organization's efforts to gather old mercury thermostats for safe recycling.

For links to the White Papers or both PowerPoint presentations, or if you would like to participate in the workgroup, please contact Sarah Grace Longsworth of ECOS. [Longsworth]

ITRC

Interstate Technology and Regulatory Council

ITRC Wraps up Well-Attended Annual Meeting

The ITRC this week held its Annual Meeting in New Orleans with more than 400 attendees representing all 50 states, federal government, industry, tribes, and public stakeholders. Participants attended nine technical team working sessions and an awards ceremony, and heard from two accomplished plenary speakers.

Plenary presentations were delivered by Louisiana Department of Environmental Quality Secretary Chuck Carr Brown, who discussed environmental justice in his state, and sustainable architect David Waggonner, who spoke about stormwater efforts in the city of New Orleans and around the world. The plenary concluded with the presentation of the first ITRC Lifetime Achievement Award given to Tom Schneider of Ohio EPA.

ITRC congratulates all of its award winners and thanks everyone who attended the Annual Meeting! Check back on the ITRC website for photos, an attendee list, and more information. [Bodi/Reyes]

Upcoming Events

ECOS Meetings

255 Attendees, 45 States Set to Meet with Pruitt, Barrasso, and Others at Spring Meeting

A final agenda is now posted for ECOS' action-packed 2017 Spring Meeting on *New Administration, New Congress: States' Path Ahead*. Registration for the April 6-7 public gathering stands at 255 attendees, with some 45 ECOS member agencies represented.

Highlights of the April 6-7 public gathering will include keynotes by Misael Cabrera of Arizona on building a change-receptive organization and by U.S. EPA Administrator Scott Pruitt and Senate Environment & Public Works Committee Chairman John

Barrasso of Wyoming on their respective priorities. Also planned is a roundtable with former EPA Acting Administrator Robert Perciasepe and former EPA Assistant Administrator for Air & Radiation Jeffrey R. Holmstead on the outlook for the agency. Additional discussions will center on produced water from shale gas production, environmental infrastructure, the energy future, the Volkswagen settlement, community engagement, Sustainable Materials Management, and compliance improvement.

The ECOS room block at the Mayflower Hotel is closed, but government rates may be available. Please contact Sarah Grace Longsworth of ECOS if you plan to cancel a room at the hotel so that we can accommodate the next person on our waiting list.

Access the final agenda, online registration, and hotel information here. [Parisien]

Webinars

ITRC on Groundwater Statistics for Environmental Project Managers

Statistical techniques may be used throughout the process of cleaning up contaminated groundwater, but it can be challenging for practitioners who are not experts in statistics to interpret and use statistical techniques. This training class will encourage and support project managers and others who are not statisticians to:

- Use the ITRC Technical and Regulatory Web-based Guidance on Groundwater Statistics and Monitoring Compliance to make better decisions for projects;
- Apply key aspects of the statistical approach to groundwater data; and
- Answer common questions on background, compliance, trend analysis, and monitoring optimization.

Join ITRC on **April 6 at 1-3:15 p.m. Eastern** for this essential online training! Learn more and register here. [Bodi]

U.S. EPA on Assessing and Addressing Near-Road Air Quality with Easy Modeling

A U.S. EPA webinar on **April 20 at 2-3:30 p.m. Eastern** will present the Community-LINE Source Model (C-LINE), a user-friendly, near-road air pollution model. C-LINE allows users to evaluate how changes in traffic may affect air pollution. Users can easily manipulate model inputs to also examine upwind and downwind effects, or estimate the areas most influenced annually by near-road pollution.

Register here to attend the webinar and learn more. [Hanson]

ECOSWIRE Notes

ECOSWIRE will not be published on April 7 due to the ECOS Spring Meeting. Publication will resume on April 14.

Also, the March 24 edition of *ECOSWIRE* incorrectly reported the date of a House hearing on state ozone standard flexibility. That hearing was held on March 22, not May 22.

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: ECOS
Sent: Fri 12/22/2017 4:34:41 PM
Importance: Normal
Subject: ECOS Leaders Meet in Washington to Advance Cooperative Federalism, Congress Funds Government thru Mid-January, & More
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ECOSWIRE

Friday, December 22, 2017

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ECOS will not be published on December 29 and will resume publication January 5. From all the ECOS staff, best wishes for the holidays and New Year!

ECOS Leaders Advance Discussions with U.S. EPA on Cooperative Federalism and More

This week ECOS President Todd Parfitt of Wyoming, Vice President Becky Keogh of Arkansas, Secretary-Treasurer Jim Macy of Nebraska, and ERIS President David Paylor of Virginia conducted visits with U.S. EPA officials in Washington, DC, to continue conversations around oversight of delegated programs and advancing Cooperative Federalism 2.0. The ECOS leaders met with Henry Darwin, Deputy Assistant Administrator and Chief of Operations, and officials in the U.S. EPA Offices of Air and Radiation and Enforcement and Compliance Assurance.

The leadership also spent time on the search process for a new ECOS/ERIS Executive Director. The members' commitment to the organizations agendas at this busy time of year is sincerely appreciated. [Dunn]

From left to right: Todd Parfitt (WY), Becky Keogh (AR), Susan Bodine (U.S. EPA OECA), David Paylor (VA), and Jim Macy (NE).

Congress Funds Government through Mid-January

On December 20, Congress passed a Continuing Resolution (CR) to fund the federal government through January 19, 2018. The third CR in the FY 2018 budget cycle, this bill maintains FY17 spending levels, albeit with some budget anomalies associated with various policy riders. The bill is expected to be signed by President Trump before the current CR expires at midnight Friday.

With lawmakers imminently heading home for the holiday recess, negotiations will resume in January on overall spending caps as well as several unrelated issues expected to be rolled into the budget debate. [McAleer]

U.S. EPA Announces Next Steps Following Proposed CPP Repeal

U.S. EPA on December 18 issued an Advance Notice of Proposed Rulemaking (ANPRM) indicating that the agency will solicit public input as it considers the next regulatory steps to limit greenhouse gas emissions from existing electric utility generating units (EGUs), also known as power plants.

The ANPRM is a separate, but related, action to the October 16 proposal to repeal the Clean Power Plan. It offers the public the opportunity to comment on specific topics for the agency to consider in developing any subsequent proposed rule. EPA is specifically soliciting information on systems of emission reduction for EGU facilities, compliance measures, and state planning requirements under Clean Air Act section 111(d).

EPA will take comment on the ANPRM for 60 days following publication in the *Federal Register*. More information, including the ANPRM and fact sheet, are available here. [Poole]

ECOS and Other State Media Associations Co-Sign Letter on VIDA

ECOS and three other nonprofit associations representing state environmental regulatory agencies (the Association of Clean

Water Administrators [ACWA], the Association of State Wetland Managers [ASWM], and and the Association of Fish and Wildlife Agencies [AFWA]) co-signed a letter to members of Congress this week detailing the potential consequences for environmental quality if the Vessel Incidental Discharge Act (S. 1129) were enacted. The associations previously wrote a letter of concern on VIDA in June 2016.

Read this week's letter here. [Longsworth]

U.S. EPA Finalizes e-Manifest User Fee Rule

U.S. EPA on December 20 finalized its rule for setting and revising fees for users of the e-Manifest system. This final e-Manifest User Fee Rule completes the regulatory framework for implementing Congress' *Hazardous Waste Electronic Manifest Establishment Act of 2012*, which authorizes EPA to implement a national system and collect user fees to recover the costs of developing and operating the system.

Click here for more information about the final e-Manifest User Fee Rule, including the pre-publication version.

For additional information, join EPA for the next e-Manifest webinar on **January 3 at 2-3:30 p.m. Eastern** by accessing the live webinar here. [Parisien]

Former U.S. EPA Acting Administrator McCabe Tapped to Head New Jersey DEP

New Jersey Governor-Elect Phil Murphy on December 20 announced his selection of former U.S. EPA Acting Administrator Catherine McCabe to serve as Commissioner of the state Department of Environmental Protection. She will succeed Bob Martin in the post.

Among McCabe's previous positions are Deputy Regional Administrator of EPA's Region 2 and Deputy Chief of the U.S. Department of Justice Environmental Enforcement Section. ECOS looks forward to welcoming her as a member! [Parisien]

Ehm Selected as Executive Committee Region 7 Representative

ECOS is pleased to announce that Bill Ehm of Iowa has been selected by his regional colleagues to serve as Region 7 Representative to the Executive Committee. Ehm fills the unexpired term of Jim Macy, who was elected Secretary-Treasurer earlier this year.

Ehm's term is effective through the 2018 Fall Meeting, with the option for renewal for a full two-year term. [Swanson]

Bill Ehm of Iowa

Cross Off Spring Meeting Registration and Reservations from Your Holiday To Do List

ECOS' elves are already hard at work planning a timely and wide-ranging Spring Meeting on *Getting to Results*. The gathering, to be held March 20-22 ECOS Spring Meeting in St. Paul, Minnesota, will spotlight ECOS' expanding Results.org effort, as well as state initiatives to accelerate and enhance land cleanups, promote cross-agency partnerships, ensure a secure and sustainable energy future, encourage Sustainable Materials Management, achieve tangible results through Cooperative Federalism 2.0 and E-Enterprise, tackle PFAS, and effectively communicate progress to the public.

Also planned are keynotes by Governor Mark Dayton of Minnesota (invited) and a generational expert on building for future agency success, a point-counterpoint session on Clean Water Action 404 assumption, and two offsite evening events including an excursion to the Science Museum of Minnesota.

Register by **February 16** to receive the reduced early bird rate. Also, act now to reserve a room at the hotel by calling The Saint Paul Hotel at (800) 292-9292, and mention the ECOS Spring Meeting to receive the group rate. The special ECOS group rates of $149 (government and staff room) and $169 (deluxe room) plus tax are available until February 19 or sellout of the room block, whichever is sooner. ECOS room nights include March 19, 20, and 21, with limited availability March 22. Visit the Spring Meeting page for additional details.

For agenda or sponsorship information, please contact Lia Parisien of ECOS. Contact Sarah Grace Longsworth for registration information and Megan Swanson for hotel information. [Parisien]

State News You Can Use

New Mexico Develops Streamlined Oil and Gas Air Emissions Application

Ohio EPA Announces 2018 Water Pollution Control Loan Fund Program Management Plan

Mississippi Offers Tips to Promote a Green Holiday Season

Need-to-Know News in Compliance and Enforcement, Air, & Water

U.S. EPA Delays FY17 Data Verification, Plans Webinar on Verification Tool and Improvements

Area of Focus: *Compliance and Enforcement*

This week, ECOS shared with members a letter from U.S. EPA's Office of Enforcement and Compliance Assurance (OECA) announcing a delay in the timing of the FY2017 data verification period to allow states time to review changes to the metrics and measures for the State Review Framework Round 4.

The letter also announces a national webinar on **January 16, 2018 at 3-4:15 p.m. Eastern** regarding data verification and improvements EPA has made to its tool that states use to complete their verification process. States may register here.

For more information, contact Rebecca Kane of OECA. [Graves]

Court Orders U.S. EPA to Set Timetable for Ozone Designations

Area of Focus: *Air*

On December 20, the U.S. Court of Appeals for the DC Circuit ordered U.S. EPA to act by **January 12** to set a firm date and outline a compliance timetable for remaining attainment designations for the 2015 ground-level ozone standard.

All designations were due October 1. U.S. EPA formally published designations for areas of the country in attainment on November 16. The final decisions for areas likely out of compliance have not been released.

In June 2017, EPA Administrator Scott Pruitt announced a one-year extension that would have pushed back the deadline for all attainment designations until October 2018. This extension was withdrawn in August 2017. For enforcement purposes, the attainment designations start the clock for states that must draft cleanup plans for areas that are out of compliance. [Poole]

U.S. EPA Launches Water System Partnerships Website

Area of Focus: *Water*

U.S. EPA has launched a new interactive website to promote awareness of the benefits of drinking water partnerships. For communities and utilities facing growing costs and challenges for treating drinking water, drinking water system partnerships provide opportunities to increase capacity, share costs, and leverage other resources.

The new website highlights ways partnerships can address these challenges, enhancing public health by working together and sharing information through a user-friendly interface accessible to states, communities, utilities, and others. [Piper]

U.S. EPA Appointments

Stepp Moving From Region 5 to Helm of Region 7

U.S. EPA Administrator Scott Pruitt on December 19 announced the appointment of former ECOS member Cathy Stepp to become Regional Administrator for Region 5.

Stepp currently serves as Principal Deputy Regional Administrator for Region 7 and will return to the Midwest region, where

was Secretary of the Wisconsin Department of Natural Resources from 2011 to 2017. Stepp also previously served as a Wisconsin State Senator. [Parisien]

ECOS Staff News

Graves Promoted to Executive Project Manager

ECOS congratulates Beth Graves on her recent promotion to the position of Executive Project Manager!

Graves, who has worked for the association for a decade, spearheads work conducted under the E-Enterprise for the Environment initiative and the ECOS Planning Committee. [Parisien]

Opportunities

Reminder: State Communications Leads Sought for New ECOS Community of Practice

ECOS invites all members to provide the contact information for their agency's lead communications expert to become part of our new Communications Community of Practice. In accordance with ECOS President Todd Parfitt's 2017-2018 priorities, ECOS is launching this virtual learning community for state communications professionals to share best practices, success stories, challenges, and transferable lessons.

It is anticipated that once all contacts are identified, the group may hold three calls per year and also use one another as resources to share questions and information. The group also will periodically interface with U.S. EPA communications leads from Headquarters and the Regions.

Contact information for your state expert may be sent to Nia Duke of ECOS. [Duke]

U.S. EPA Invites Nominations to National Advisory Council for Environmental Policy and Technology

U.S. EPA is seeking nominees to fill several potential vacancies on the National Advisory Council for Environmental Policy and Technology (NACEPT). Representatives of state, local, and tribal governments, academia, industry, and nongovernmental organizations serve on this federal advisory committee.

NACEPT provides advice to the EPA Administrator on a range of policy, management, and technology issues.

For more information, including how to apply, refer to the *Federal Register* notice. The deadline for applications is **January 3, 2018**. [Hanson]

U.S. EPA Seeks Nominations to Commission for Environmental Cooperation

Committee

U.S. EPA invites nominations for appointment to the Governmental Advisory Committee to advise the U.S. Representative to the Commission for Environmental Cooperation.

Nominees are sought by **February 16, 2018** from the state, local, and tribal government sectors. For more information, click here. [Parisien]

Upcoming Events

Webinars

ITRC on Remedy Selection for Contaminated Sediments

The Interstate Technology & Regulatory Council (ITRC) will hold its first online training of 2018 on *Remedy Selection for Contaminated Sediments* on **January 9, 2018 at 1-3:15 p.m. Eastern.**

The sediments underlying many of our nation's major waterways are contaminated with toxic pollutants from past industrial activities. Cleaning up contaminated sediments is expensive and technically challenging. Sediment sites are unique and complex, and require a multidisciplinary approach and often project managers lack sediments experience. This training course will teach participants to apply the associated ITRC technical and regulatory guidance as a tool to overcome the remedial challenges posed by contaminated sediment sites.

Learn more and register here. [Bodi]

Exchange Network on Grant Applications

In support of the FY 2018 Exchange Network (EN) Grant cycle, U.S. EPA is hosting webinars to assist interested applicants. The final webinar will be held **January 10, 2018 at 1-2 p.m. Eastern**. Topics will include a summary of the FY 2018 EN Grant program, new and modified solicitation notice content, administrative procedures for submitting applications, tips on writing a high-quality application, and a question-and-answer session for potential applicants.

To participate, call (866) 299-3188 and use conference code 2025660466#, and access this webinar link. An Adobe Connect account is not required to enter the webinar, and participants can simply log in as a guest.

For more information, please contact EPA's Salena Reynolds. [McAleer]

ECOS and U.S. EPA on ECHO

An E-Enterprise ECHO team led by Oklahoma and EPA has identified potential improvements to the display, usability, and accuracy of U.S. EPA's Enforcement and Compliance History Online (ECHO) website. The team has identified a number of possible enhancements to improve the user experience and the display of facility compliance history.

Two identical webinars were planned to share the proposed changes with the co-regulator community and receive

feedback. The first was held on December 12, and a second webinar will repeat the same content on **January 11, 2018 at 12-2 p.m. Eastern**. Please register here.

In advance of the webinars, states can learn more about the proposed changes in this summary document. Please note that the changes are proposals only at this point and the team is seeking comments and input to ensure that proposed changes will meet the needs of ECHO stakeholders. You may send general written comments, questions, and markup of the summary document to Layne Piper of ECOS.

Oklahoma, as state team lead, asks states to provide input on a very brief set of questions to help the team better understand the ECHO community's preferences for a specific set of display and labeling options. Please click here by **January 26** to participate. [Piper]

NEWMOA and NERC on C&D Materials Management & Markets in the Northeast

The Northeast Waste Management Officials Association (NEWMOA) and Northeast Recycling Council (NERC) will host a webinar on Construction & Demolition (C&D) Materials Management and Markets in the Northeast on **January 17, 2018 at 2-3:30 p.m. Eastern**.

The discussion will center on two main areas:

- The results of NEWMOA's recently released analysis of data collected by the environmental agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont on architectural C&D materials disposal, processing, and recovery for reuse and recycling.
- The results of a Massachusetts Department of Environmental Protection (MassDEP) funded study that evaluated the current and future status of C&D debris management in Massachusetts, and identified and recommended potential opportunities for the diversion of a greater proportion of recyclable materials to recycling markets. NERC administered and contracted with DSM Environmental Services to conduct the project. MassDEP has established a goal of diverting 50 percent of C&D materials from disposal, but in recent years the actual diversion rate has plateaued at around 30 percent. The primary objective of the analysis undertaken by DSM was to first assess incoming and outgoing materials at Massachusetts C&D processors and handling facilities, and to determine what the opportunities and constraints are to increase materials diversion beyond 30 percent.

Register for the webinar here. Please reach out to Connor MacCartney with any questions.
[MacCartney]

U.S. EPA on Urban Soil Contamination

U.S. EPA will hold its first Tools and Resources webinar of the New Year on **January 17, 2018 at 3-4 p.m. Eastern**. The webinar will focus on identifying sources (site-related or natural, anthropogenic) of soil contamination in urban settings, a process vital to decision-making during environmental cleanups.

Presenters will discuss EPA's methodology for citywide or urban area background data set collection, as well as results of a recent U.S. EPA study on soil contamination in Louisville and Lexington, Kentucky; Memphis and Chattanooga, Tennessee;

Raleigh and Winston-Salem, North Carolina; and Gainesville, Florida.

To register, click here. [Longsworth]

ECOS on 2018 Clean Water SRF

On **January 30, 2018 at 2-3:30 p.m. Eastern**, ECOS will host a webinar to highlight three states' innovative uses of Clean Water State Revolving Funds (CWSRF). The three featured projects demonstrate unique uses and dispersion of CWSRF funds, and offer valuable case studies that will build state capacity and knowledge.

See this flyer for more information on the presentations from Idaho, Iowa, and Massachusetts. The webinar is the product of a research project to document the flexibilities of the CWSRF. ECOS is working under a cooperative agreement with U.S. EPA's Office of Water.

Register here for the webinar, or contact Layne Piper for more information. [Piper]

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: ECOS
Sent: Fri 4/14/2017 6:28:19 PM
Importance: Normal
Subject: Record Number of Attendees Gather for Successful Spring Meeting, Arizona DEQ Invites States to Lean Rollout, & More
Received: Fri 4/14/2017 6:29:33 PM

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ECOSWIRE

Friday, April 14, 2017

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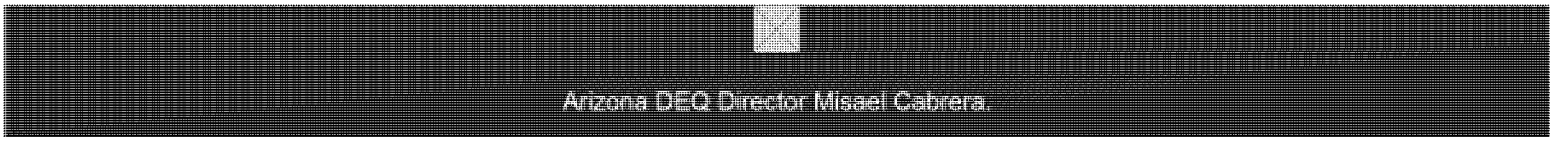
Record Number of Attendees Gather for Lively and Productive ECOS Spring Meeting

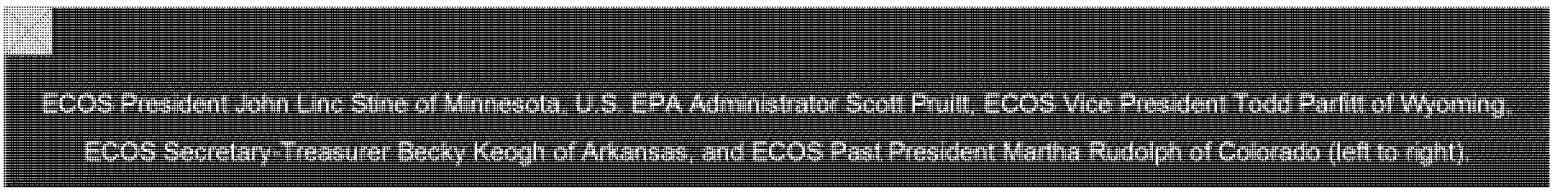
A record-setting 273 attendees representing 45 states and the District of Columbia, federal agencies, non-governmental organizations, and industry gathered last week in Washington, DC, for a wide-ranging and well-received ECOS Spring Meeting. Highlights of the two-day public gathering included a rousing luncheon keynote by Arizona Department of

Environmental Quality Director Misael Cabrera on the need for agencies to embrace change (see related story) and a roundtable with former U.S. EPA leaders Bob Perciasepe and Jeff Holmstead on the potential challenges of implementing regulatory reform.



Arizona DEQ Director Misael Cabrera.

Also headlining the meeting was U.S. Senate Committee on Environment & Public Works Chairman John Barrasso (R-WY), who outlined priorities including reform of the Endangered Species Act and streamlined permitting and indicated that President Trump's budget likely will not be accepted by Congress. ECOS attendees later heard for the first time as a group from EPA Administrator Scott Pruitt. The new EPA chief emphasized his priorities of rule of law, process review, and cooperative federalism. Noting that 40 percent of the country is in nonattainment of the National Ambient Air Quality Standards (NAAQS), Pruitt expressed a desire to focus on compliance assistance in partnership with states.



ECOS President John Linc Stine of Minnesota, U.S. EPA Administrator Scott Pruitt, ECOS Vice President Todd Parfitt of Wyoming, ECOS Secretary-Treasurer Becky Keogh of Arkansas, and ECOS Past President Martha Rudolph of Colorado (left to right).

A series of engaging discussions rounded out the two days of public sessions. They touched on beneficial reuse of produced water, environmental infrastructure, the energy future, states and the Volkswagen settlement, community engagement, Sustainable Materials Management, and compliance improvement. The ECOS Data Management Workgroup and Environmental Research Institute of the States also met for side discussions.

During a Saturday morning business session, ECOS members passed eight resolutions and extended three more to the Fall Meeting. One new resolution discusses the value of supplemental environmental projects and their value to states. Other topics addressed in successful resolutions are safer chemicals, the respectful use of data, lead wheel weights, and small community challenges. Resolutions on NAAQS and water infrastructure investment were tabled for follow-up on the April 20 All-Member Call (see related story). The call also will cover ECOS efforts to move ahead to strongly represent states in the current dialogue with U.S. EPA over state and federal roles.

ECOS sincerely thanks the following for their sponsorship of the Spring Meeting: Natural Resources Defense Council, The Natura Conservancy, Diesel Technology Forum, American Fuel & Petrochemical Manufacturers, Bloomberg BNA, National Association of Clean Water Agencies, American Water Works Association, Edison Electric Institute, Center for Climate & Energy Solutions, Walmart, American Gas Association, Entergy, U.S. Business Council for Sustainable Development/Pathway 21, MDB, Inc., American Coalition for Clean Coal Electricity, Waste Management, and National Association of Manufacturers.

Links to meeting materials and a list of attendees are available here. For additional coverage of meeting activities, see the following *Inside EPA* articles, which are reprinted with permission: *States Plan Proposals to Achieve EPA Goals in Lieu of Agency Guidance* and *States Urged to Craft Plans for EPA's Delegation of Environmental Work*. [Parisien/Hanson]

Arizona DEQ Invites State Observers for Lean Management

System Rollout

As discussed at the Spring Meeting, the Arizona Department of Environmental Quality (ADEQ) continues to deploy its Lean Management System in several of its program offices and is opening the process to observers from other ECOS member agencies. This management system was the focus of ADEQ Director Misael Cabrera's recent ECOS meeting keynote, and the agency has previously hosted state and foreign government delegations seeking to learn from its experiences.

ADEQ has offered states the opportunity to send delegations of up to two people to one of a series of week-long deployment "evolutions" that will be taking place April 24-August 7. Attendence is first-come, first served, and some evolutions may be open to U.S. EPA delegations as well. ADEQ is also offering to share training materials used in the rollout with the observer states.

For more information, contact Leah Rossow of AZDEQ via email or at (602) 771-2309. [McAleer]

E-Enterprise for the Environment Engagement Forum Spotlights Successful Projects

E-Enterprise for the Environment

More than 200 stakeholders met on April 5 at the Mayflower Hotel in Washington, DC, to attend the first ever engagement forum for E-Enterprise for the Environment. The purpose of the forum, which followed a meeting of the E-Enterprise Leadership Council, was to highlight many of the E-Enterprise projects that benefit the regulated community, states and tribes, and the federal government. More than 15 projects were on display for attendees, who were able to participate in hands-on demonstrations and speak to subject matter experts.

The featured projects covered an array of topics, including ensuring safe drinking water, submitting and receiving reports electronically to save time and resources, customizing reports, and reporting air emissions data.

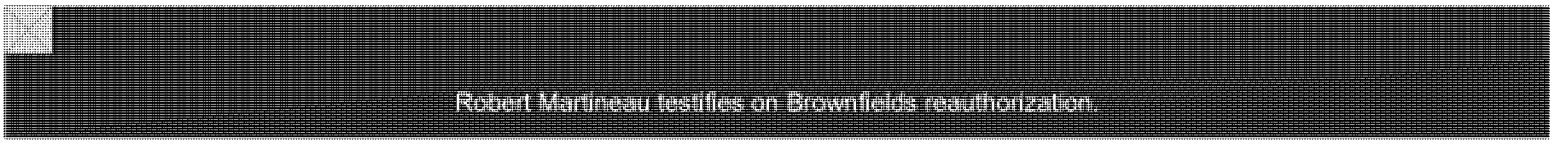
To view photos of the event, visit the ECOS Twitter page at twitter.com/ECOStates
and the new ECOS Facebook page at facebook.com/ECOStates. Subscribers to Bloomberg BNA can read a story about the event here. [Lane]

Martineau Testifies on Behalf of ECOS at House Hearing on Brownfields

Area of Focus: *Waste*

On April 4, former ECOS President Robert Martineau testified on behalf of ECOS before the House Subcommittee on the Environment and the Economy at a hearing on a discussion draft for Brownfields reauthorization. Martineau, Commissioner of the Tennessee Department of Environment & Conservation, highlighted the benefits of the Brownfields program, pointing to several key projects in communities around Tennessee. Martineau went on to discuss the importance of liability protection in reducing risk for investors, citing local Tennessee examples of Brownfields successes which led to job creation,

environmental improvement, and economic stimulation at formerly dormant properties. His written testimony can be found here.



Subcommittee Chairman John Shimkus (R-IL) discussed the subcommittee's intent to reauthorize and improve the program, calling it vital to states and local communities. Members of the subcommittee also gave the program high marks as they asked witnesses to comment on how aspects of the draft, such as liability protection, multipurpose grants, and funding increases, would yield improved results. State and local witnesses emphasized the importance of Brownfields grants in conducting site assessments and leveraging private investment.

Shimkus closed the hearing calling for continued coordination with ECOS and others as the discussion draft moves forward. More information on the hearing can be found here. [MacCartney]

ECOS Members Speak to the National Academies

On April 10, ECOS members Ben Grumbles of Maryland, David Paylor of Virginia, Martha Rudolph of Colorado, and Bryan Shaw of Texas met with members and staff of the Division of Earth and Life Studies (DELS) of the National Academies of Sciences, Engineering, and Medicine. DELS members and staff spent the afternoon speaking with ECOS members and state association staff to better understand states' needs and how they can work with them.

Martha Rudolph, ECOS Past President and ERIS Board Member, provided a brief overview of what it takes to run a state environmental agency. ERIS President David Paylor addressed state research needs. In one panel session, ECOS members discussed what might help the National Academies foster a productive relationship with states. A separate panel session with state association staff discussed how state associations can serve as a conduit between DELS and states. [Hanson]

ECOS Launches Facebook Page

ECOS is now on Facebook! You can visit our page and read relevant news stories, view photos from events, and keep up-to-date with relevant ECOS and state information. We're easy to find at facebook.com/ECOStates. You can also type Environmental Council of the States or simply @ecostates in the search bar.

Make sure you "like" and "follow" our page when you visit, and contribute to our page with relevant posts. Also be sure to share our page with your colleagues and friends.

ECOS Wants to Hear about State Plans for Earth Day Festivities

How is your state celebrating Earth Day? If your agency is hosting an event, advertising environmentally friendly practices on social media, or promoting the day in another way, ECOS wants to hear about it.

This year, ECOS is compiling a list of the "Top 10" state Earth Day initiatives. Please send information on efforts that your state has underway for Earth Day **by April 19** to Sarah Grace Longsworth of ECOS. [Longsworth]

State News You Can Use

Ohio EPA Pioneers Materials Marketplace to Promote Reuse and Recycling

Minnesota Considers Strengthening Successful Renewable Energy Standard

Rhode Island Offers Free Trees to Save Homeowners Money

Need-to-Know News in Water & Air

Pruitt Notifies States of Reconsideration of Power Plant Effluent Guidelines Rule

Area of Focus: *Water*

This week, U.S. EPA Administrator Scott Pruitt sent ECOS President John Stine of Minnesota a letter to notify states of EPA's intent to consider petitions for reconsideration of EPA's November 2015 final rule establishing Effluent Guidelines and Standards for the Steam Electric Power Source Generating Point Source Category. The petitions, submitted by the Utility Water Act Group and the U.S. Small Business Administration's Office of Advocacy, specifically seek relief from deadlines set by the final rule.

This rule contains flexibilities for states that issue National Pollution Discharge Elimination System permits. The permitting authority may determine a date when the new effluent limitations apply to any given discharger within a specified period of time. Permitting authorities may choose a later date within that time period based on information received from the discharger. Under the rule, Publicly Owned Treatment Works must meet new pretreatment standards by November 2018.

EPA will stay the rule for 120 days while it considers relief from the deadlines for both direct and indirect discharges, and also will revisit other substantive aspects of the rule. According to the agency, Pruitt's letter reinforces his stated commitment to working with states and local communities to improve the environment and bolster the economy while respecting the rule of law. [Piper]

DOJ, U.S. EPA File Motions to Hold Cases Regarding Ozone, Methane, and Carbon Emissions

Area of Focus: *Air*

In accordance with a March 28 Executive Order signed by President Trump, U.S. EPA is reviewing existing regulations that

potentially burden domestic energy production. On April 7, the Department of Justice, on behalf of U.S. EPA, submitted motions to hold two cases in abeyance until the current Administration is able to determine if and how it wants to address the rules at issue – the 2015 ozone NAAQS and the 2016 methane rules for new oil and gas operations.

These motions come on the heels of the Administration's request to hold the Clean Power Plan (CPP) case in abeyance and a motion in opposition of that hold submitted by NY, CA, CT, DE, HI, IL, IA, ME, MD, MA, MN, NM, OR, RI, VT, VA, WA, DC, and six cities on April 5, which was then met with a reply brief from DOJ/EPA in support of putting a hold on the case. To date, the D.C. Circuit has not yet ruled on whether it will hold the CPP case or the case addressing 2016 methane rules in abeyance.

However, on April 11, a three-judge panel at the U.S. Court of Appeals for the District of Columbia Circuit released an order delaying oral arguments in the case challenging the 2015 ozone NAAQS. The 2015 ozone NAAQS case was originally brought by the Murray Energy Corporation after U.S. EPA promulgated a rule to lower ozone standards from 75 parts per billion (ppb) to 70 ppb in October 2015. EPA has spent the past year defending the rule; however, on April 7, the agency submitted a motion requesting an indefinite delay of the oral arguments as the current Administration reviews its position and determines whether EPA should "reconsider the rule or some part of it." While there is no timetable for review completion, the court is requiring the EPA to report back on the status of its review every 90 days. [Poole]

Federal Agency News

OMB Issues Guidance on Federal Restructuring and Workforce Reduction

The White House Office of Management and Budget (OMB) this week released a memo that provides guidance to federal agencies on how to fulfill the requirements of President Trump's Reorganization Executive Order to make the government "lean, accountable, and more efficient." The 14-page memo provides wide-ranging guidance on how to achieve this.

Portions that may be of particular interest to ECOS members include developing agency reform plans that include how they will "better leverage technology and improve underlying business processes" and "streamline and eliminate processes." This appears to align well with E-Enterprise for the Environment and business process improvement initiatives in which ECOS has been involved. According to the memo, OMB will be looking at cross-cutting reforms to address situations where "multiple federal agencies interact in fragmented or duplicative ways with state, local, and tribal governments." It also will be looking for opportunities to reduce reporting burdens.

ECOS staff will track implementation of this memo as closely as possible over the next several months, as there are deadlines in June and September for agency reform plans and much of the restructuring ties to the President's budget proposals. [Hanson]

U.S. EPA News

Beachhead Leader Benton Departing U.S. EPA

The White House announced this week that Don Benton, who led President Trump's beachhead team at U.S. EPA, is departing the agency. President Trump intends to nominate Benton for Director of the Selective Service System, the independent agency that would oversee a potential military draft.

Benton served as Trump's Campaign Chairman in Washington State. He was a State Senator there for 20 years and was also Director of the Clark County Environmental Services Department. [Parisien]

Appointment & Career Opportunities

Water Experts Sought for National Academies Committee

The National Academies of Sciences, Engineering, and Medicine is seeking nominations for committee members to serve on a new study that will help guide research at the U.S. Geological Survey Water Mission Area. The study will identify the most compelling national water resource challenges and science and research needs for the next 25 years and consider integrating across science disciplines.

Areas of expertise needed include: surface and groundwater quality and quantity, water resources, and water use and availability for humans and the environment. Nominations are due **April 28**. [Hanson]

Utah Hiring Water Quality Director

The Utah Department of Environmental Quality seeks a Director for their Division of Water Quality. This individual will become a member of the agency's Executive Management Team and be responsible for developing programs to promote and protect the waters of the state.

For more information, see here. To be considered for this opportunity, email your resume and cover letter to anelsen@utah.gov by **April 24**. [Longsworth]

Upcoming Events

Exchange Network

Updated EN2017 Agenda Now Available

The EN2017 Program Committee is pleased to present an updated 2017 Exchange Network National Meeting Agenda. Sessions and descriptions have been added for this year's event. Don't miss your chance to engage at EN2017 on **May 16-18** in Philadelphia!

The updated agenda reflects this year's theme: Innovation and Partnership. Some of the topics to be covered in peer-to-peer learning opportunities and interactive discussion sessions include:

- Shared services
- Identity management
- Advanced monitoring
- Combined Air Emissions Reporting (CAER)
- Innovations in water monitoring data
- ICIS-NPDES

- Mobile applications
- Process improvement
- E-Enterprise for the Environment
- Communicating success in environmental management
- Harnessing APIs and cloud technology

Registrants are reminded to book their rooms ahead of the **April 21** hotel deadline. State, territory, and tribal participants are eligible to apply for travel reimbursement, and EN2017 is open to all interested parties,

For all the latest information, please visit http://www.exchangenetwork.net/en2017. [Ortiz]

Calls

ECOS All-Member Call

ECOS will hold an All-Member call on **April 20 at 3-4 pm Eastern**. The call will focus on reviewing resolutions and discussing the ECOS' next steps on cooperative federalism and the state-federal relationship in the new Administration.

Please contact Megan Swanson of ECOS for more information. [Longsworth]

ECOS Toxic Substances Reduction Workgroup

ECOS's Toxic Substances Reduction Workgroup will hold its next monthly call on **April 25 at 3 p.m. Eastern**. The call likely will feature updates to U.S. EPA's regulations under the Lautenberg Act, including those of recent chemical prioritization and risk evaluation proposals, as well as the process for the TSCA inorganics byproduct negotiated rulemaking.

If you have any questions or would like to be added to the workgroup, please contact Sarah Grace Longsworth of ECOS. [Longsworth]

Webinars

U.S. EPA on Plastics and Microplastics

U.S. EPA's Trash Free Waters program is hosting two webinars in April related to plastics and microplastics contaminating waters.

On **April 18 at 1 p.m. Eastern**, Dr. Bart Koelmans will discuss the chemicals found in or on microplastics and their potential risks in "Contaminants Associated with Microplastics."

On **April 26 at 4 p.m. Eastern**, Dr. Denise Hardesty will present information on risk assessment of plastics and microplastics in the environment during "Risk Assessment of Plastics and Microplastics."

To attend the webinars log in to here at the appropriate time. [Hanson]

ITRC on PVI: Fundamentals of Screening, Investigation, and Management

ITRC will hold a web-based training on **April 18 at 1-3:15 p.m. Eastern** on its technical and regulatory guidance document entitled Petroleum Vapor Intrusion (PVI): Fundamentals of Screening, Investigation, and Management (PVI-1, 2014). The training will provide regulators and practitioners with consensus information based on empirical data and recent research to support PVI decision making under different regulatory frameworks. The PVI assessment strategy described in this guidance document enables confident decision making that protects human health for various types of petroleum sites and multiple PHC compounds.

Learn more and register here. [Bodi]

U.S. EPA on Challenging Nutrients Coalition

U.S. EPA will host a webinar on **April 19 at 3-4 p.m. Eastern** on its public-private coalition to address the issue of excess nitrogen and phosphorous levels in water. This interdisciplinary coalition has representatives from over 80 organizations, including federal agencies, states, nonprofits, manufacturers, researchers, and for-profit industry. The coalition will focus on understanding requirements and needs, and helping to provide technology solutions and support. It will also discuss innovative projects and partnerships improving nutrient monitoring.

State environmental and health agencies, tribes, local governments, communities, and other stakeholders are invited to participate. To join the webinar, please register here. If you are unable to listen through your computer speakers, please dial (866) 299-3188 and enter access code 2025646669. Please contact Lisa Matthews of U.S. EPA for more information or Amy Scheuer with registration questions. [Piper]

ITRC on Geospatial Analysis for Optimization at Environmental Sites

ITRC will hold a web-based training on **April 20 at 1-3:15 p.m. Eastern** on its guidance document entitled ITRC's Geospatial Analysis for Optimization at Environmental Sites (GRO-1). The training will educate and train state regulators and other practitioners on using geospatial analyses to evaluate optimization opportunities at environmental sites.

Learn more and register here. [Bodi]

U.S. EPA on Assessing and Addressing Near-Road Air Quality with Easy Modeling

A U.S. EPA webinar on **April 20 at 2-3:30 p.m. Eastern** will present the Community-LINE Source Model (C-LINE), a user-friendly, near-road air pollution model. C-LINE allows users to evaluate how changes in traffic may affect air pollution. Users can easily manipulate model inputs to also examine upwind and downwind effects, or estimate the areas most influenced annually by near-road pollution.

Register here to attend the webinar and learn more. [Hanson]

ECOS on Performance Partnership Grants

On **April 26 at 2:30 p.m. Eastern**, ECOS will hold a webinar for states on U.S. EPA's Performance Partnership Grants

(PPGs). The webinar will include information on how PPGs work, the benefits they provide, and best practices for managing them. Information on states' use of PPGs will be provided through case studies and ECOS statistics, and there will be an opportunity for Q&A.

To register, click here. For more information, please contact Owen McAleer of ECOS. [McAleer]

To: Alexandra Dunn[adunn@ecos.org]; Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Kelly Poole
Sent: Fri 10/20/2017 1:53:46 PM
Importance: Normal
Subject: E&E Article quoting your 10/19/17 ABA SEER presentation
Received: Fri 10/20/2017 1:54:53 PM

Hi Alex and Kevin,

Just in case you haven't already seen this - you are both quoted.

Best,
Kelly

EPA

Pruitt directive changing agency legal approach — official

Amanda Reilly, E&E News reporter
Published: Thursday, October 19, 2017

Kevin Minoli, acting general counsel at U.S. EPA, today spoke about a directive aimed at curbing settlements with environmental groups. @kevminlaw/Twitter

BALTIMORE — A controversial U.S. EPA directive aimed at curbing settlements with environmental groups will change how the agency's lawyers handle litigation, a top agency official said today.

EPA Administrator Scott Pruitt issued the memorandum Monday in response to what critics of the Obama administration dubbed "sue and settle." Under the practice, opponents say, environmental groups sue friendly agencies and then settle in order to advance their regulatory agendas (***Greenwire***, Oct. 16).

The Trump administration is concerned "that people whose rights are being affected or who are being very much impacted by a settlement are not participating in it," Kevin Minoli, acting general counsel at EPA, said at an annual American Bar Association environmental law conference here in Baltimore.

The memorandum will affect how EPA's lawyers in the Office of General Counsel and at the Justice Department approach litigation in two major ways, said Minoli, a career official who is serving as the agency's top lawyer until Congress confirms Matt Leopold, President Trump's pick to fill the position permanently.

One is the directive's instructions that EPA "seek to exclude" attorneys' fees or costs to any petitioner or plaintiff in litigation against the agency. Republican critics have long charged that environmental groups bring lawsuits against the government in order to fill their pockets with fees.

"This is a big change for us," Minoli said. "There are provisions that allow for attorneys' fees in a variety of statutes, and our instructions now from our client are to seek to exclude them."

The other "big change": that EPA reach out to states and regulated entities affected by potential settlement agreements and seek to "receive the concurrence of any affected states and/or regulated entities" before entering into a settlement with environmental groups.

"I think it's coming from the concern that people who are being impacted by the settlement are not at the table," Minoli said. "And people sometimes feel that it's beyond the statutory authority because it feels wrong to them to be impacted in a way and not be at the table."

He said that, over the last six to nine months, EPA has already begun reaching out to states that could be affected by litigation against the agency.

"We have done this sort of de-facto already," Minoli said. "So if we have a state involved that we're working with, we'll say, 'Can you get the state to say whether they like it or not?' Because that will help to move this case along."

Republicans who have long warned that environmentalists are using court settlements to push regulatory agendas have broadly praised the new directive. Environmentalists, though, have slammed Pruitt for allowing industry to sign off on

settlements and court orders.

Minoli noted, though, that Pruitt's directive only tells EPA's lawyers to "seek" concurrence: "We don't have to obtain concurrence. It doesn't say obtain concurrence."

Alexandra Dunn, executive director of the Environmental Council of the States, said in an interview on the sidelines of today's conference that her group was "very pleased" to see that the directive adopted some of its recommendations.

ECOS adopted in 2013 and updated in 2016 a resolution calling on EPA to proactively reach out to states when they could be affected by a consent decree as a result of a citizen suit.

"Sometimes the state would find out about that obligation after the consent decree was signed," Dunn said. "Telling states to check the web for a case that could change their legal obligations wasn't working for as many states as it should have."

Under the new policy, she added, "someone has to formally contact the state and let them know."

Other changes under the rule are smaller or require EPA to expand on existing practices.

Under the directive, for example, EPA is required to post potential settlement agreements online and open them for public comment. The agency already generally does this for Clean Air Act cases, but not in litigation stemming from other environmental laws.

The memorandum also requires EPA to create a searchable database of past consent decrees and post online within 15 days notices of intent to sue. The agency already posts notices — but not always within 15 days.

"Some of these provisions are going to require us to figure out exactly how to implement them, but the administrator has tasked us with not simply putting something on the web and expecting others to come and check it all the time," Minoli said.

'Deadlines are going to be met'

Many of the lawsuits that critics say fall under the "sue and settle" category arise from statutory obligations in environmental laws. Environmental groups, for example, sue to enforce deadlines that Congress wrote into the Clean Air Act. As a result of a lawsuit, a court often sets a deadline for the agency to act.

Former Obama administration officials and environmentalists have disputed that "sue and settle" is occurring. They say that deadline lawsuits or other suits that seek to hold EPA to mandatory duties are difficult for the agency to win, and settling is often the prudent legal move. Not settling would likely result in protracted litigation and a loss for EPA.

"Pruitt has no defense to lawsuits where EPA has badly missed a legally mandated deadline," Pat Gallagher, legal director at the Sierra Club, said earlier this week. "If he insists on fighting the obvious, Pruitt will be guilty not just of failing to protect public health and the environment, but also of wasting agency resources, undermining the credibility of DOJ attorneys and burdening the courts with useless litigation."

Minoli today said that part of EPA's strategic plan under the Trump administration is to hit statutory deadlines. Plans include a "deadline board" to keep track of whether the agency is on target with specific deadlines.

"Deadlines are going to be met," he said, adding that EPA also intends to eliminate the backlog of Freedom of Information Act requests at the agency.

But he acknowledged that the goal is "hard to imagine" because the agency often falls short: "It is a breakthrough mindset of we should be complying with the deadlines that we are given by Congress. We don't know how to achieve that quite yet."

EPA, in fact, missed a key Clean Air Act deadline requiring the agency to determine by Oct. 1 which areas of the country are out of compliance with the 2015 national ozone standards.

The attainment designations start the clock for states to come up with plans to reduce ozone, which is a key component of smoggy air. Environmentalists promptly threatened to sue, saying EPA showed "blatant disregard" for the law.

John Walke, clean air director at the Natural Resources Defense Council, tweeted today that EPA's rhetoric on deadlines contradicts reality.

"The Trump EPA has missed a deadline for safer air for Americans, & many, many FOIA response deadlines," he said.

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To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: ECOS
Sent: Fri 5/5/2017 8:40:57 PM
Importance: Normal
Subject: U.S. EPA FY17 Funding, STEP Meeting, & More
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Congress Passes FY17 Omnibus that Avoids Significant U.S. EPA Cuts

Area of Focus: Planning

On May 4, Congress passed an omnibus appropriations bill to fund the federal government through the end of fiscal year 2017. The bill funds U.S. EPA at $8.06B, an $81M or one percent reduction from FY16 enacted funding levels. Noteworthy changes to the State and Tribal Assistance Grants (STAG) account include:

- An increase in the usual rescission from unobligated STAG funds from $40M to $61.2M;
- The addition of a new $4M *Water Quality Monitoring* non-categorical grant to address the Gold King Mine Spill;
- Partial increases in the Diesel Emissions, Targeted Airshed, and CWA §319 grant programs; and
- Elimination of the $21M State Multipurpose Grant program from FY2016.

President Trump, despite earlier comments hinting at a shutdown, is expected to sign the bill before the government shutdown deadline of midnight today. Once the bill is enacted, EPA will have 30 days to release an FY17 operations plan containing program-level information on funding and rescission applications.

For an ECOS chart showing the full EPA budget, click here. [McAleer]

STEP Theme and Registration to Go Live Monday

After wrapping up a successful Spring Meeting last month, ECOS already is busy planning its July 17 STEP Meeting in Washington, DC. The meeting theme, hotel information, and registration will go live on Monday at www.ecos.org.

To discuss STEP sponsorship opportunities, please contact ECOS Executive Director Alexandra Dunn at (202) 266-4929 or adunn@ecos.org. [Lane]

ECOS Seeks Innovative CWSRF Projects to Spotlight

Area of Focus: *Water*

ECOS is pleased to announce the commencement of a project to document additional innovative projects funded by the Clean Water State Revolving Fund (CWSRF) under a cooperative agreement with U.S. EPA's Office of Water. We are seeking 1-2 paragraphs about projects and approaches that demonstrate unique uses and dispersion of CWSRF funds. The uniqueness and creativity of the work could lie in the project itself or in the financing approaches, terms, and conditions. We will ultimately profile about 15 projects, in a variety of large, medium, and small communities, and in rural, suburban, and urban settings. We are especially focusing on projects that benefit disadvantaged communities, that build recipient capacity, and that address sustainability challenges.

ECOS will select 10-15 projects to be featured from those submitted, and will follow up with those points of contact to document the approach in detail. ECOS will write the case studies in summer 2017, and will share drafts with the parties referenced in each case study. A panel of judges will choose three projects from EPA, ECOS, and our partner water associations to be featured in a national webinar in the fall. The report will be designed and finalized shortly thereafter. We will share a link to a recording of the webinar for future use and viewing.

Please see this memorandum for the information you need to respond to this call for brief project descriptions to be included in ECOS' report and webinar. Examples may be provided to Layne Piper of ECOS by May 19. [Piper]

U.S. EPA Submits Rule to Repeal and Rewrite WOTUS

Area of Focus: *Water*

U.S. EPA on May 2 sent to the White House Office of Management (OMB) its first rule under the Trump Administration's policy review order. The proposed rule, "Definition of 'Waters of the United States' –Recodification of Preexisting Rules," would repeal the Obama-era Clean Water Act (CWA) jurisdiction rule as the first step in the process of rewriting that policy.

The proposed rule may not be subject to the Administration's order for agencies to designate two existing rules for repeal for every new rule because it has not been categorized as "economically significant."

Technically the deadline for OMB review is 90 days, but the process could take more time. For a copy of an EPA presentation detailing the process for fulfilling Trump's Executive Order to review the Clean Water Rule, please email Layne Piper. [Piper]

ECOS Welcomes U.S. EPA Step Forward on State CCR Permitting

Area of Focus: *Waste*

ECOS this week commended U.S. EPA on its initiation of guidance regarding EPA review and approval of state applications to operate coal combustion residual (CCR) permit programs. State authority to develop and carry out CCR programs, provided by the 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act), actively had been sought by ECOS and its members.

On April 28, EPA Administrator Scott Pruitt sent letters to the nation's Governors informing them of steps the agency is taking to implement its new authority for approving state programs. "In working together on the draft guidance, EPA and the states are acting in the spirit of cooperative federalism," notes ECOS Executive Director and General Counsel Alexandra Dunn. "ECOS looks forward to continued dialogue with EPA and the Association of State and Territorial Solid Waste Management Officials in the guidance development process." *

The ECOS Waste Committee will discuss development of the guidance during a May 12 call (see related story). [Parisien]

ERIS Releases Study of State Research Needs

Area of Focus: *Environmental Research Institute of the States*

The Environmental Research Institute of the States (ERIS), an affiliate of ECOS, released this week a summary of states' current research needs and environmental priorities identified in its second bi-annual survey. The survey, distributed in fall 2016, aimed to coordinate state science needs with the work of the U.S. EPA's Office of Research and Development (ORD).

States identified surface and groundwater quality, remediation and changing remediation standards, nutrients and nonpoint source water contamination, emerging contaminants and toxics, and air quality, specifically the new ozone standard, as the most pressing challenges for their agencies in 2016. States agreed that more training on federal research information, methods, and tools could help to alleviate these issues, and noted webinars and a searchable website as resources to strengthen communication, translation of research, and the state-federal relationship around research.

ERIS has already communicated the survey results with ORD. In late February and March 2017, ORD hosted a series of follow-up calls with state representatives to discuss in more detail the science needed to address the state identified priority areas. "States are already gaining insight and finding value in the survey follow-up calls conducted with ORD," says David Paylor, ERIS President and Director of the Virginia Department of Environmental Quality. "There have been requests for additional coordination, especially regarding topics of high priority like perfluorinated chemicals."

“The Environmental Research Institute of the States is very pleased to be contributing to forming a dynamic and relevant research agenda, both at the EPA and other federal agencies throughout the scientific and policy community,” says Alexandra Dunn, Executive Director and General Counsel at ECOS.

See the full survey summary here. [Longsworth]

State News You Can Use

Iowa Project AWARE Cleanup to Tackle Upper Cedar River

Delaware Streamlines Government via Open Data Portal

Minnesota Expands Plastics Collection Services

South Carolina Works to Curb Food Waste

Ohio Offers Array of Assistance Services to Communities and Businesses

Texas Offers Tips on Going Green with Pets

Need-to-Know News in Air & Water

Twelve Governors Urge Trump to Stay in Paris Agreement, Keep U.S. Commitments

Area of Focus: *Air*

Governors from California, Colorado, Connecticut, Delaware, Hawaii, Minnesota, New York, Oregon, Pennsylvania, Rhode Island, Virginia, and Washington this week signed onto a letter urging President Trump to remain in the Paris Climate Agreement and uphold the United States' commitment to reduce greenhouse gas emissions 26-28 percent below 2005 levels by 2025.

Click here to view the letter. [Poole]

Pruitt Sees 'Relief' Coming after Ending EPA's 'War on Coal'

Area of Focus: *Air*

In a May 1 op-ed in the *Washington Times,* U.S. EPA Administrator Scott Pruitt writes that "relief – and prosperity – is on the way" because the Trump administration has ended the "war on coal" by targeting major climate change regulations such as the agency's greenhouse gas standards for existing power plants.

Pruitt also maintains that greenhouse gas emissions growth in China and India "would continue unchecked" under Obama Administration policies and criticizes the Clean Power Plan for yielding "very little" environmental benefits while simultaneously imposing major economic costs.

For more information, please follow this link. [Poole]

Governors Form Water Policy Learning Network

Area of Focus: *Water*

The National Governors Association this week announced the formation of a new Water Policy Learning Network in its Center for Best Practices, to be co-chaired by Governors Edmund G. Brown of California and Larry Hogan of Maryland. The goal of the network is to inform Governors' natural resource advisors on best practices for water policy that "they are uniquely positioned to advance."

For more information, see NGA's press release. [Piper]

Regulatory Reform Corner

In accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda," U.S. EPA is seeking input on regulations that may be appropriate for repeal, replacement, or modification.

On April 11, EPA announced it is soliciting public comments on its evaluation of existing regulations per EO 13777. All public comments will be accessible online in U.S. EPA's docket on the Regulations.gov website identified by Docket ID No. EPA-HQ-OA-2017-0190. On April 13, EPA issued a *Federal Register* notice: Evaluation of Existing Regulations.

On March 24, EPA Administrator Scott Pruitt issued an agency-wide memorandum on implementation of EO 13777, which announced members of the required Regulatory Reform Task Force and directed program offices to seek public input on existing regulations and report findings to the Task Force by May 15. Per the Administrator's March 24 memo, EPA offices have conducted several sessions and still plan the following:

- The Office of Land and Emergency Management will host a public meeting to obtain public feedback on **May 9 at 9 a.m.- 5 p.m. Eastern** in Arlington, VA.

To track all U.S. EPA regulatory reform activities, visit the regulatory reform central website at https://www.epa.gov/laws-regulations/regulatory-reform. [Parisien]

Upcoming Events

Calls

Shale Gas Caucus

The Shale Gas Caucus will hold the next call in its produced water series on **May 10 at 2-3 p.m. Eastern.** Participants will hear from the Environmental Defense Fund on U.S. EPA's publicly owned treatment works guidance and from Anadarko on centralized waste treatment permitting. Time will be allotted at the end of the call for a discussion of proposed topics for the SGC's third phase.

A calendar invitation has been distributed to SGC members, and an agenda and materials will follow. For additional information or to participate (open to states and EPA), contact Lia Parisien of ECOS. [Parisien]

Waste Committee

The ECOS Waste Committee will hold a call on **May 12 at 3-4 p.m.** Eastern to discuss the development of EPA guidance on state combustion residual (CCR) permitting programs. Moderated by Waste Committee Chair Scott Thompson of Oklahoma, the call will feature Association of State and Territorial Waste Management Officials (ASTSWMO) CCR Workgroup Co-Chairs Bonnie Buthker of Ohio and Mike Forbeck of Ohio, who will report out on the workgroup's recent discussions. States will then have a chance for Q&A and input.

A Google call invitation has been distributed. To be added to the invitation, please contact Lia Parisien. [Parisien]

Webinars

ITRC on Long-Term Contaminant Management

Institutional controls (ICs) are administrative or legal restrictions that provide protection from exposure to contaminants on a site. When ICs are jeopardized or fail, direct exposure to human health and the environment can occur.

While guidance and research to date has focused on the implementation of ICs, a training class on **May 9 at 1-3:15 p.m. Eastern** will focus on post-implementation IC management, including monitoring, evaluation, stakeholder communications, enforcement, and termination.

Learn more and register here.

Combined Air Emissions Reporting (CAER) Project

E-Enterprise

On **May 10 at 2-3 p.m. Eastern**, a webinar will be held on the Combined Air Emissions Reporting (CAER) project. CAER is a collaborative effort among U.S. EPA, state, tribal, and local air agencies to streamline industry reporting of air emissions

and associated data. The webinar will offer an advance look at the presentation planned for EN2017 and will include information on CAER's background, supporting projects, and lessons learned to date.

Registration is available here. The call-in number is (415) 930-5321, with access code 945641420. Contact Joe Mangino of U.S. EPA for more information. [Parisien]

ECOS on State Lean Skills Exchange Program

On **May 10 at 2-3 pm Eastern**, ECOS will hold a webinar on its State-to-State Business Process Improvement (BPI) Skills Exchange Program. This program, kicked off in 2016, pairs BPI leaders across state agencies and provides support for a short, in-person staff detail focused on training, strategic planning, or other capacity building exercises.

Guests will hear from the state participants in three different exchanges, as well as an introduction from ECOS Innovation & Productivity Committee Chair John Mitchell of Kansas. To register for the webinar, click here. [McAleer]

ITRC on LNAPLs

Light non-aqueous phase liquids (LNAPLs) are organic liquids such as gasoline, diesel, and other petroleum hydrocarbon products. Understanding LNAPLs is important because they are present in the subsurface at thousands of remediation sites across the country, and are often the sole reason why a site remains "open."

This ITRC training course is relevant for all levels of state and federal regulators, environmental consultants, and technically inclined site owners and public stakeholders. The training course is divided into three parts:

- LNAPL Characterization and Recoverability -- Improved Analysis on **May 11 at 1-3:15 p.m.** Learn more and register.
- Evaluating LNAPL Remedial Technologies for Achieving Project Goals on **May 18 at 1-3:15 p.m.** Learn more and register. [Bodi]

U.S. EPA on Stormwater Finance

EPA's Water Infrastructure and Resiliency Finance Center and the Water Environment Federation are hosting a series of webinars on stormwater finance. The series will focus on strategies that counties can use to support stormwater management programs. Each webinar will provide a technical overview of successful examples of communities supporting stormwater programs.

Please register for the webinars at these links:

- **May 11, 2-3 p.m. Eastern** - Register for webinar

- **May 23, 2-3 p.m. Esatern** - Register for webinar

For more information, click here. [Piper]

EN2017 Meeting Webcast

Exchange Network

The 2017 Exchange Network National Meeting (EN2017) will be broadcast live via webcast! Unable to join us in person? Join the webcast to view the General Sessions on May 16-18 and the Concurrent Presentation Sessions on the afternoons of May 16-17. You will be able to remotely engage in discussions, submit questions to presenters, and interact with panelists!

Registration for the webcast is now open here. There is no charge.

Links to recordings and the presentation slides will be available here. [Ortiz/Parisien]

U.S. EPA on Decentralized Wastewater MOU Partnership

EPA will hold a webinar on "How State and Local Governments Promote and Proclaim SepticSmart Week," presented by the EPA Decentralized Wastewater MOU Partnership. The webinar will be held on **May 16 at 2-3 p.m. Eastern**. Staff from the State of Washington, the State of Alaska, and the City of Ogden Dunes, Indiana will present. Register for the webinar here. [Piper]

U.S. EPA on Rapid Benefit Indicators

The Rapid Benefit Indicators (RBI) approach, developed by EPA's Office of Research and Development, is an easy-to-use process for assessing restoration sites using non-monetary benefit indicators. The RBI approach uses readily available data to estimate and quantify benefits to people around an ecological restoration site using indicators of nature's value to people (ecosystem service benefit indicators).

The framework uses five questions to guide the process of indicator selection and measurement: Can people benefit from an ecosystem service? How many people benefit? How much are people likely to benefit? What are the social equity implications? How reliable are benefits expected to be over time?

State environmental and health agencies, tribes, and others are invited to register for the webinar on **May 17 at 3-4 p.m. Eastern**. To join, please register here. If you are unable to listen through your computer speakers, please dial (866) 299-3188 and enter access code 2025646669.

Contact Lisa Matthews for more information or Amy Scheuer with registration questions. [Parisien]

U.S. EPA on Water Issues

U.S. EPA has two ongoing series of webinars addressing clean water and small water systems. The Office of Research and Development (ORD) hosts a series on water research with the following monthly webinars scheduled:

- **May 31** - EPA's Global Change Explorer Web Tools Collection
- **June 21** - Nonpotable Water Reuse in Urban Environments

- **August 30** - Nutrients: Weatherizing, Salinization, and Evolution of Urban Water
- **October 25** - Life Cycle Assessment as a Decision Support Tool

More information on the water research webinar series, including how to register, is available here.

In addition, ORD and the Office of Water host a monthly webinar series on small drinking water systems. Their schedule for the rest of the year is:

- **May 20** - Water Systems Partnerships
- **June 27** - Treatment for Harmful Algal Blooms and Associated Toxins and Funding for Upgrades
- **July 25** - Water Loss and Distribution System Infrastructure: Leak Detection and Cost Savings
- **August 29** - Treatment and Control for Manganese and Iron
- **September 26** - Small Systems Research DeRISK Center
- **October 31** - State Acceptance of UV Disinfection Technologies
- **November 28** - Lead in Schools and Selecting Lead Free Fixtures
- **December 12** - Residual Chlorine and Calibration Check for Chlorine Instruments

More information on the small systems webinars, including recordings of past webinars and how to register, is available here. [Hanson]

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: ECOS
Sent: Fri 8/4/2017 7:16:46 PM
Importance: Normal
Subject: ECOS Explores Lean, Superfund, & Results, Publishes Green Report on Permit Streamlining
Received: Fri 8/4/2017 7:17:54 PM

ECOSWIRE

Friday, August 4, 2017

Vol. 19 No. 30

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States, U.S. EPA Gather in Denver to Talk Lean

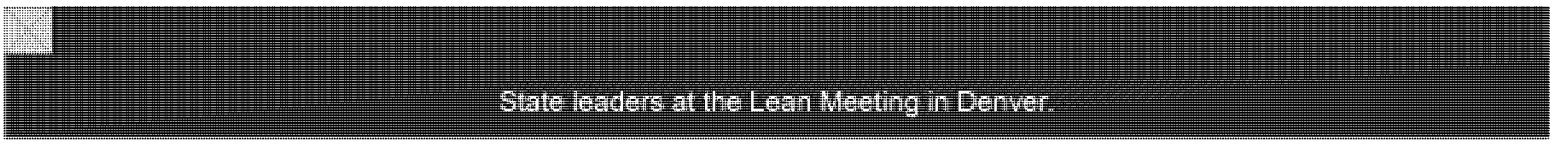
A group of 42 business process improvement (BPI) leaders representing 16 states and U.S. EPA met this week at EPA's Region 8 offices in Denver to share lessons learned and strengthen ties among environmental agency process improvement professionals. Over the course of the August 1-2 gathering, the group formulated a plan to coordinate their respective initiatives, share results data, and establish a structure for an official national BPI network.

State leaders and EPA Lean Advocates also gained insight from presentations and tours from several Colorado-based innovators including the City of Denver Peak Academy, Colorado Department of Transportation, and Governor's Office Lean

team.

ECOS thanks all the states that participated in the meeting: Arizona, Arkansas, California, Colorado, Delaware, Iowa, Minnesota, Montana, New Hampshire, Ohio, Rhode Island, Utah, Vermont, Washington, Wisconsin, and Wyoming. Please contact Owen McAleer of ECOS for more information on this work.

In related news, the EPA Office of the Inspector General (OIG) this week released a report finding that the agency "needs to institutionalize its 'Lean' program to reap cost and time benefits." Among OIG's recommendations to the agency was the "development of a cohesive strategy for leading, implementing, and monitoring the Lean initiative." Last month, EPA named former ECOS member Henry Darwin of Arizona as Assistant Deputy Administrator and Chief Operating Officer with the charge of implementing a Lean management system to achieve better results for the agency. Darwin will participate in an ECOS Fall Meeting roundtable on *Inspiring Innovation and a Change-Oriented Culture* alongside his Arizona successor, Misael Cabrera, and other states. [McAleer]



State leaders at the Lean Meeting in Denver.

ECOS Superfund Workgroup Holds Inaugural Call, Seeks More Members

Senate Hearing Focuses on Superfund Modernization

A new ECOS Superfund Workgroup on July 31 held its inaugural call to chart a cooperative federalism course in implementing the recent recommendations of the U.S. EPA Superfund Task Force recommendations (see July 28 edition of *ECOSWIRE*). Led by ECOS Waste Committee Chair Scott Thompson of Oklahoma, the workgroup will hold monthly calls to maximize state-federal cooperation in implementing the federal recommendations. Task force Chair Kell Kelly, Senior Advisor to the EPA Administrator, will participate in the workgroup along with other EPA officials and leaders of the Association of Solid Waste Management Officials (ASTSWMO).

On the call, ECOS members expressed support for the overarching goals of the recommendations to accelerate and improve cleanups and said states want to be an integral part of achieving them. Members pointed to a need to be involved upfront in issues like remedy selection and to find ways to avoid duplication of effort and contain costs to states.

In August 1 testimony before a Senate Environment & Public Works subcommittee, former ASTSWMO President Jeffery Steers echoed these sentiments, pointing to an opportunity to modernize certain aspects of Superfund law to acknowledge the role of states as co-regulators who operate sophisticated programs across the country. "Our members, and to some extent our regulated community, continue to be challenged with the skyrocketing financial obligations associated with remediating contaminated lands," Steers said.

Steers also pointed to ECOS' *Cooperative Federalism 2.0* effort during the question-and-answer period. C-SPAN's video coverage of the hearing is available here.

If you are interested in participating in the new ECOS workgroup, or have written comments or suggested call topics to

share, please contact Lia Parisien of ECOS. [Parisien/Harrison]

ECOS All-Member Webinar Provides Sneak Preview of ECOSResults.org

ECOS convened an All-Member Webinar on August 1 to provide an update on the ECOS Results Project and a first glimpse at preliminary infographics and site designs of ECOSResults.org. An adaptable and engaging website, ECOSResults.org will use charts, graphs, and other data displays to show the progress states are making to protect human health and the environment.

Under the leadership of ECOS President John Linc Stine of Minnesota and Past President Martha Rudolph of Colorado, ECOS launched the project in 2016 to identify common environmental, economic, and public health progress measures for all states to use. Fourteen common measures were selected in early 2017 following a robust state-led process through the ECOS Planning Committee, in coordination with the state environmental media associations.

ECOS members on the call were supportive of the design preview. Stay tuned for a demo of ECOSResults.org at the ECOS Fall Meeting. If you have any questions about the project, please contact Sonia Altieri or Connor MacCartney of ECOS. [Altieri]

New ECOS *Green Report* Spotlights State Permit Streamlining

In an effort to showcase state innovations in permitting processes, ECOS has prepared a *Green Report* on permit streamlining efforts.

The report, titled *Streamlining Permitting: An Inventory of State Environmental Agency Online Tools and Resources*, provides details of initiatives as they appear on the websites of state environmental agencies. [Harrison]

ECOS, Other Associations Urge U.S. EPA to Clarify 404 Assumption

This week ECOS and the Association of Clean Water Administrators and Association of State Wetland Managers sent a letter to U.S. EPA's Office of Water encouraging the agency to adopt the majority recommendations included in the final report of the Assumable Waters Subcommittee and undertake an effort to clarify Section 404(g), either through guidance or rulemaking.

The letter expresses appreciation for the agency's response to state requests to clarify the 404 assumption process, and says "many states already play a major role in implementation of dredge and fill regulations, and that combined state-federal programs provide effective, efficient, resilient, protective, and stable regulation in accordance with Section 404 of the Clean Water Act." [Piper]

ECOS Fall Meeting Early Registration Ends Today; Room

Block Closes August 9

Early registration closes today for ECOS' action-packed 2017 Fall Meeting in Jackson Hole, Wyoming on *Bright Ideas: States Leading the Way*. The interactive program ties together a number of cutting-edge ECOS initiatives of interest to a variety of stakeholders. Among the highlights, ECOS will feature outstanding programs selected for 2017 State Program Innovation Awards, unveil a new dashboard that states can use to better protect human health and the environment, and explore early wins in its Cooperative Federalism 2.0 campaign to forge an improved state-U.S. EPA partnership.

Confirmed keynoters are Wyoming Governor Matt Mead and former ECOS member Collin O'Mara (Delaware), now President & CEO of the National Wildlife Federation. Attendees also will be welcomed to the meeting by David Vela, Superintendent of Grand Teton National Park. U.S. EPA officials already confirmed to attend are Assistant Deputy Administrator & Chief of Operations Henry Darwin, Senior Advisor to the Administrator for Regional & State Affairs Ken Wagner, and Acting Deputy Administrator Mike Flynn. Sure to be a highlight of the meeting is an evening excursion to Grand Teton National Park.

The public portion of the Fall Meeting runs September 11 and 12, with **states-only sessions planned until 11:15 a.m. on September 13**. These discussions will be followed by the E-Enterprise for the Environmental Leadership Council Meeting on the afternoon of September 13 and morning of September 14 until 11:30 a.m. The special ECOS group rates at Snow King Resort are available until **August 9** or sellout of the room block, whichever is sooner.

See the Fall Meeting website for the agenda, online registration, hotel reservation link, hotel overflow suggestions, ground transportation options, and area attractions. For more information about the agenda, sponsorship opportunities, or the hotel, contact Lia Parisien of ECOS. For additional registration information, contact Sarah Grace Longsworth of ECOS. [Parisien]

State News You Can Use

New York YouTube Series Features DEC Staff and Their Work

Pennsylvania Develops App for O&G Inspections, Nominated for National Award

Tennessee Digitizes Septic System Cords for Public

Missouri Offers Compliance Assistance Visits

Rhode Island Offers $4 Million to Help Communities Protect Open Space

Utah Voluntary Cleanup Program Promotes Streamlined Process

Member Spotlight

Two Minutes with Julie Moore, Secretary, Vermont Agency of Natural Resources

How long have you been Secretary of the Vermont Agency of Natural Resources? What's your best experience thus far?

I was appointed by Governor Phil Scott in January 2017. My best experience thus far been the opportunity to learn from the amazing scientists and practitioners who work on the incredible diversity of issues ANR is tasked with – everything from cumulative contaminant risk to groundwater as a public trust to forest fragmentation and even endangered mussels!

How has being a member of ECOS benefited you?

ECOS provides the opportunity to meet my counterparts in other states. Still feeling quite new to the job, there is so much value in having a network of peers who are very generous with their time and sharing their experience.

What is the best management advice you've received?

"Play it straight." Ultimately, people – whether staff, advocates, or the public – appreciate direct, concise, honest answers, including saying "I don't know" when you don't know.

CONTINUED HERE

Need-to-Know News in Air & Waste

U.S. EPA Withdraws Extension for 2015 Ozone NAAQS Designations

Area of Focus: *Air*

On August 2, U.S. EPA withdrew the 1-year extension of the deadline for promulgating initial area designations for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) published in the June 28 *Federal Register*. Through discussions with states concerning designations, EPA now understands that the information gaps that formed the basis of the extension may not be as expansive as the agency previously believed. There may be areas where designations could move forward in the next few months. Publication of this action in the *Federal Register* is expected within the next couple of weeks.

The action comes a day after several states filed a petition for review in the U.S. Court of Appeals for the DC Circuit. New York, California, Connecticut, the District of Columbia, Delaware, Illinois, Iowa, Maine, Maine, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, Pennsylvania, Vermont, and Washington are asking the U.S. Court of Appeals to review EPA's decision to extend the deadline for promulgating initial area designations for the 2015 ozone NAAQS.

While not referencing the lawsuit directly, EPA Administrator Scott Pruitt notes in an August 2 press release, "Under previous Administrations, EPA would often fail to meet designation deadlines, and then wait to be sued by activist groups and others, agreeing in a settlement to set schedules for designation. We do not believe in regulation through litigation, and we take deadlines seriously." He adds, "We believe in dialogue with, and being responsive to, our state partners. Today's action

reinforces our commitment to working with the states through the complex designation process." [Poole]

U.S. EPA 2017 Air Trends Report Shows Significant Progress

Area of Focus: *Air*

On August 2, U.S. EPA released its annual air trends report titled *Our Nation's Air: Status and Trends Through 2016* that shows significant air quality strides during a time of economic growth.

Reporting that that this progress often is overlooked, EPA points to the Association of Air Pollution Control Administrators' report *The Greatest Story Seldom Told*, which explains that "[t]hrough the Clean Air Act's framework of cooperative federalism, hard-working state and local air agencies have been responsible for tremendous progress in virtually every measure of air quality."

The report shows that between 1990 and 2016, national concentration averages of harmful air pollutants decreased considerably, with:

- Lead (3-month average) down 99 percent;
- Carbon monoxide (8-hour) down 77 percent;
- Sulfur dioxide (1-hour) down 85 percent;
- Nitrogen dioxide (annual) down 56 percent;
- Ground-level ozone (8-hour) down 22 percent;
- Coarse Particulate Matter (24-hour) down 39 percent; and
- Fine Particulate Matter (24-hour) down 44 percent.

However, EPA Administrator Scott Pruitt does note, "Despite this success, there is more work to be done. Nearly 40 percent of Americans are still living in areas classified as 'nonattainment' for failing to achieve national standards. EPA will continue to work with states, tribes, and local air agencies to help more areas of the country come into compliance."

See more information here. [Poole]

U.S. EPA Tests New Smoke Sense App to Educate Public and Gather Information

Area of Focus: *Air*

U.S. EPA has released a new smartphone app that will help develop risk communication strategies and determine the extent that exposure to wildland fire smoke affects health and productivity. The Smoke Sense app, currently available only for Android phones, allows individuals to learn about wildfires and smoke health risks in their area, report their health symptoms, and report the range of actions they are willing to take to reduce their exposure. The app provides users current and forecasted air quality by zip code and a map showing current fires and smoke plumes. More information about the app and the research it supports is available here.

With the nation in the midst of wildfire season and wildfire smoke triggering air pollution advisories, states may want to review information in *Wildfire Smoke: A Guide for Public Health Officials* to help prepare for and address wildfire smoke events. [Hanson]

U.S. EPA Adds Superfund Sites to National Priorities List

Area of Focus: *Waste*

U.S. EPA announced July 31 that it is adding seven, and proposing to add four, hazardous waste sites to the Superfund program's National Priorities List (NPL). Superfund law directs EPA to update the NPL annually, and only sites added to the NPL are eligible to receive federal funding for long-term permanent cleanup.

"My goal as Administrator is to restore the Superfund program to its rightful place at the center of the agency's core mission," said EPA Administrator Scott Pruitt. "When we clean up these sites, we make communities healthier places to live and clear the way for development and increased economic activity."

The following sites are being added to the final NPL:

- The Battery Recycling Company in Bo. Cambalache, Puerto Rico
- Former Custom Cleaners in Memphis, Tennessee
- Highway 18 Ground Water in Kermit, Texas
- Microfab Inc. in Amesbury, Massachusetts
- Old Highway 275 and N. 288th Street in Valley, Nebraska
- Post and Lumber Preserving Co. Inc. in Quincy, Florida
- Saint-Gobain Performance Plastics in Village of Hoosick Falls, New York

The following sites are being proposed for addition to the NPL:

- Newark South Ground Water Plume in Newark, Delaware
- American Creosote DeRidder in DeRidder, Louisiana
- Mississippi Phosphate Corporation in Pascagoula, Mississippi
- Eagle Industries in Oklahoma City, Oklahoma

Federal Register notices and supporting documents for the final and proposed sites are here. [Parisien]

Opportunities

U.S. EPA Seeks State Officials for Local Government/Small Community Advisory Committees

U.S. EPA seeks local, state, and tribal elected and appointed officials for its Local Government Advisory Committee (LGAC) and the Small Community Advisory Committee (SCAC). The LGAC provides advice on the development and implementation of agency programs at the local level, while SCAC members serve to represent communities of under 10,000. Applications are due **August 10** for consideration for September 2017 appointments to 1-2 year terms.

The full solicitation is available here. [Parisien]

Upcoming Events

Calls

PFAS Workgroup

ECOS and U.S. EPA's joint PFAS Workgroup will host a bimonthly call for interested state and EPA partners on **August 7 at 4-5 p.m. Eastern**. The purpose of the call is to share information on PFAS work, including analytical methods, toxicity, and treatment. Monday's call will feature a discussion of EPA's cross-agency coordination of PFAS activities from the agency's Office of Research and Development (ORD) Acting Assistant Administrator Bob Kavlock, as well as an update on the EPA's PFAS Analytical Methods Workgroup from Co-Chairs Cindy Caporale of Region 3, Schatzi Fitz-James of the Office of Land and Emergency Management, and Chris Impellitteri of ORD. States will also have time to share and discuss their PFAS updates.

Please pre-register for the call by contacting Sarah Grace Longsworth of ECOS with questions or for a copy of the workgroup's May call summary. [Longsworth]

Webinars

ECOS and U.S. EPA on Compliance Research Part 2

Jodi Short of the University of California Hastings College of Law will present "Monitoring: A Review of Research on Inspection and Compliance for Regulators" on **August 9 at 3-4:30 p.m. Eastern**. The research highlights what is known about the way monitoring practices can drive – or undermine – compliance.

The Compliance Research Webinar Series, hosted by EPA OECA's NETI and designed for ECOS, U.S. EPA, and state environmental agencies, will help program administrators understand how collaboration with academics can identify effective and measureable approaches to compliance. In each of the webinars, social and behavioral scientists from top universities will present research findings on compliance monitoring, rule and permit design, reporting and transparency, and innovative enforcement. Following the presentations, participants will discuss program initiatives that can be put to the test through collaboration with academics.

Additional webinars will be held as follows:

- Rule and Permit Design – **September 28, 2-3:30 p.m. Eastern**
- Reporting and Transparency – **October 24, 2-3:30 p.m. Eastern**
- Innovative Enforcement – **November (TBD)**

For more information, please contact Sonia Altieri at saltieri@ecos.org. [Altieri]

ITRC on Long-Term Contaminant Management Using Institutional Controls

On **August 14 at 1-3:15 p.m. Eastern**, ITRC will host an online training on Long-Term Contaminant Management Using Institution Controls (ICs).

ICs are administrative or legal restrictions that provide protection from exposure to contaminants on a site. When ICs are

jeopardized or fail, direct exposure to human health and the environment can occur. After attending this training, participants will be able to describe best practices and evolving trends for IC management at individual sites and across state agency programs, improve IC reliability and prevent IC failures, and improve existing, or develop new IC management programs.

Learn more and register here. [Bodi]

U.S. EPA on Water Finance Clearinghouse

U.S. EPA, through the Water Infrastructure and Resiliency Finance Center, this week launched the Water Finance Clearinghouse, a web-based portal to help communities make informed financing decisions for their drinking water, wastewater, and stormwater infrastructure needs. The Clearinghouse contains a database with more than $10 billion in water funding sources and more than 550 resources to support local water infrastructure projects. The clearinghouse follows a crowdsourcing model and can be updated in real time based on suggestions from states, federal agencies, and other water sector stakeholders through the Contributor Portal.

States can register for webinars on how to use the Clearinghouse on **August 14, 18, 24, and 31.** All webinars will be held at **2-3 p.m. Eastern**. [Piper]

U.S. EPA on CROMERR Shared Services

EPA's Office of Environmental Information will hold an open call on its Shared Cross-Media Electronic Reporting Rule (CROMERR) Services (SCS) as a follow-up to the webinar held in May. Over the past couple of years, EPA has assisted co-regulators in implementing electronic reporting programs by developing and managing CROMERR- compliant services centrally and offering these services to co-regulators as needed to reduce time and money from developing and maintaining these services independently.

This webinar will be held on **August 16 at 2 p.m. Eastern.** U.S. EPA will present the latest enhancements and alternatives available to co-regulators and discuss the processes, roles, and resource requirements for integrating and managing SCS. Existing SCS implementers and those planning to implement new electronic reporting programs in their agencies may be interested in attending.

To register, click here. [Ortiz/Parisien]

U.S. EPA on ECHO Training

Join the Enforcement and Compliance History Online (ECHO) team for another quarterly training webinar. This webinar will focus on water facility search tools including the water facility search, effluent charts, and the pollutant loading tool.

The webinar will be held on **August 22 at 1:30 p.m. Eastern**, and registration is available here. It will be recorded for the training page if this time conflicts with your schedule. [Piper]

EPA Tools and Resources Webinar

U.S. EPA will hold its monthly Tools and Resources Webinar on **August 23 at 3-4 p.m. Eastern**. The webinar will highlight the National Stormwater Calculator (SWC), which supports local, state, and national stormwater management objectives and regulatory efforts to reduce runoff and impairment through infiltration and retention using green infrastructure practices as low impact development controls. The primary focus of the SWC is to inform site developers as to how well they can meet a desired stormwater retention target with and without the use of green infrastructure. While the SWC currently operates only as a Windows-based desktop program, a mobile application version compatible with all operating systems will be released this fall.

To join the webinar, register here. [Longsworth]

U.S. EPA on Water Issues

U.S. EPA has two ongoing webinar series addressing clean water and small water systems. The Office of Research and Development (ORD) hosts a series on water research, with the following monthly webinars scheduled:

- **August 30** - Nutrients: Weatherizing, Salinization, and Evolution of Urban Water
- **October 25** - Life Cycle Assessment as a Decision Support Tool

More information on the water research webinar series, including how to register, is available here.

In addition, ORD and the Office of Water host a monthly webinar series on small drinking water systems. Their schedule for the rest of the year is:

- **August 29** - Treatment and Control for Manganese and Iron
- **September 26** - Small Systems Research DeRISK Center
- **October 31** - State Acceptance of UV Disinfection Technologies
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- **December 12** - Residual Chlorine and Calibration Check for Chlorine Instruments

More information on the small systems webinars, including recordings of past webinars and how to register, is available here. [Hanson]

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: ECOS
Sent: Fri 11/3/2017 6:08:41 PM
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Subject: Parfitt Advances ECOS Priorities in DC, ECOS Weighs in on U.S. EPA Strategic Plan, & More
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ECOSWIRE

Friday, November 3, 2017

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ECOS President Advances State Priorities across Nation's Capital

This week, Todd Parfitt of Wyoming and ECOS staff participated in a series of meetings to share Parfitt's priorities as ECOS President and information on Cooperative Federalism 2.0 and ECOSResults.org. Parfitt met with the White House Office of Management and Budget on the outlook for state and tribal assistance grants and ECOS' budget priorities generally. Walking the halls of the U.S. Capitol, Parfitt met with Senate Environment & Public Works Committee Chair John Barrasso

(R-WY) and Rep. Liz Cheney (R-WY).

Other key meetings included discussions with EPA officials on the new Smart Sectors Program and permitting reform (see related story), and a gathering with the Executive Directors of the Association of Clean Water Administrators and Association of State Wetland Managers on advancing state assumption of the Section 404 program (see related ECOS Resolution). [Dunn/Swanson]

ECOS Expresses Support for Cooperative Federalism, E-Enterprise in U.S. EPA Strategic Plan Comments

ECOS on October 31 submitted comments on the U.S. EPA's draft FY 2018-2022 Strategic Plan. In the comment letter, ECOS offers support for the draft plan's emphasis on cooperative federalism and E-Enterprise for the Environment and suggests additional areas for agency focus, such as emergency response. The letter is accompanied by several pages of technical input on various aspects of the strategic plan.

The draft plan was released October 5 for public comment. Over the course of the 26-day public comment period, ECOS held discussions on the draft through an all-member call and correspondence and submissions from individual states.

Stay tuned for a final version of the strategic plan later this year. [McAleer]

Pruitt Announces Directive on Agency's Science Committees

On October 31, U.S. EPA Administrator Scott Pruitt issued a directive designed to ensure "independence and integrity" of agency Federal Advisory Committees (FACs). The new policy requires all FAC members to be independent from EPA and will prevent any individual who receives EPA funding from serving on one of the agency's FACs. This principle would not apply to state, tribal, or local government agency recipients of EPA grants.

The directive focuses on the following areas related to FACs: strengthening member independence; increasing state, tribal and local government participation; enhancing geographic diversity; and promoting fresh perspectives.

In addition, Pruitt announced key leadership appointments for three of the 23 committees: Michael Honeycutt of the Texas Commission on Environmental Quality will chair the Science Advisory Board; Tony Cox of Cox Associates will head the Clean Air Scientific Advisory Committee; and Paul Gilman of Covanta will serve as Chairman of the Board of Scientific Counselors. In the coming days, the full membership of these committees and boards will be announced and is expected to include state environmental agency science experts. [Swanson]

U.S. EPA Seeks Comments on Applying Federal Permitting Best Practices to State Infrastructure Permits

On October 31, EPA issued a *Federal Register* notice seeking comments on whether federal permitting best practices are generally applicable to infrastructure permits issued by delegated or authorized states as described in Title 41 of the Fixing America's Surface Transportation Act (FAST-41).

Federal "best practices" specifically refers to the January 18 document *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects* developed by the Federal Permitting Improvement Steering Council. The document includes the following best practice areas: enhancing early stakeholder engagement; ensuring timely decisions regarding environmental reviews (including exploring opportunities to expand use of general permits where appropriate); improving coordination between federal, state, and tribal agencies; increasing transparency; reducing administrative burdens by using online permit applications, eliminating unnecessary internal process steps, and conducting routine evaluations of permit processes; using geographic information systems (GIS) to expedite permitting; creating and providing training; and implementing other best practices such as use of conflict resolution and third-party neutral facilitators.

Comments are due **November 20**. States are asked to share feedback on the best practices with Beth Graves of ECOS. [Graves]

House Looks at Hurricane Response Takeaways in Two Hearings this Week

This week, the House Committee on Transportation and Infrastructure held a hearing to "explore key takeaways from this year's unprecedented hurricane season." One of the witnesses was new U.S. EPA Region 2 Administrator Pete Lopez.

Also this week, the House Committee on Energy and Commerce Subcommittee on Energy held a hearing entitled *The 2017 Hurricane Season: A Review of Emergency Response and Energy Infrastructure Recovery Efforts*. This hearing featured witnesses from the U.S. Department of Energy and U.S. Army Corps of Engineers. [Dunn]

State News You Can Use

Louisiana, U.S. EPA, and DOJ Reach Air Pollution Settlement with ExxonMobil

Colorado, U.S. EPA, and Justice Department Reach Air Pact with PDC Energy

Missouri Accepting Comments on Reducing Red Tape

Wyoming Works with U.S. EPA to Protect Streams

Virginia Reports Cleanest Air in Past 20 Years

Arkansas Staff Get 'Groovy' at Arkansas Environmental Federation Convention

Maine Announces Governor's Awards for Environmental Excellence

ECOS Resource of the Week

ITRC's Guidance on Complex Sites

Does your state agency use resources from the Interstate Technology and Regulatory Council (ITRC)? One such resource is its latest guidance document, *Remediation Management of Complex Sites*, released this week.

This guidance presents a recommended process for remediation management at complex sites, incorporating and referring to best management practices, tools, and technologies described in previous publications by U.S. EPA, the U.S. Department of Defense, ITRC, and others. The guidance also includes numerous case studies that describe real-world applications of remediation and remediation management at complex sites.

Click here to view the document. ITRC will hold its first Complex Sites online training class on **February 6, 2018 at 1-3:15 p.m. Eastern**.

ITRC is a state-led coalition of state and federal regulators, industry, and stakeholders working together to achieve regulatory acceptance of environmental technologies. Its website can be accessed at the bottom of ECOS' homepage, or here. [Bodi/Longsworth]

Need-to-Know News in Air, Water, & Environmental Justice

U.S. EPA Sets Public Hearing on CPP Repeal

Area of Focus: *Air*

U.S. EPA has announced that it will hold a public hearing on the proposed repeal of the *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units* (commonly known as the Clean Power Plan, or CPP) in Charleston, West Virginia on **November 28-29**. Registration will be open once the public meeting notice is published in the *Federal Register*, and all individuals wishing to speak are encouraged to register in advance.

"EPA is headed to the heart of coal country to hear from those most impacted by the CPP and get their comments on the proposed Repeal Rule," said EPA Administrator Scott Pruitt.

For additional details, see the EPA press release and EPA website for background information on the CPP. [Poole]

U.S. EPA Issues Pair of Actions on Cross-State Air Pollution

Area of Focus: *Air*

U.S. EPA on October 30 announced two actions that address cross-state air pollution for the 2008 ozone standards.

One action denies a petition filed by nine northeastern states under Section 176A of the Clean Air Act asking the agency to add eight states plus portions of Virginia to the Ozone Transport Region. EPA has determined that approaches such as those under the Clean Air Act's (CAA's) good neighbor provision will be more effective in addressing remaining ozone transport obligations for the 2008 standards. More information is available here.

In the second action, EPA issued a memo to provide supplemental information to states and the Regions. This information supports the development or review of State Implementation Plans that address the CAA's "good neighbor" provision, as it pertains to the 2008 ozone National Ambient Air Quality Standards. While this information can inform the development of these plans, the information is not a final determination regarding states' remaining obligations under the good neighbor provision, and any such determination would be made through notice-and-comment rulemaking. More information is available here. [Parisien]

U.S. EPA Signs NODA for Proposed Stays of Oil and Gas Air Rules

Area of Focus: *Air*

On November 1, U.S. EPA signed two Notices of Data Availability (NODAs) related to the agency's proposed stays of air requirements in the 2016 New Source Performance Standards for the oil and natural gas industry. EPA on June 16 had proposed a two-year stay and a three-month stay of the rule's fugitive emissions requirements, well site pneumatic pump standards, and requirements that closed vent systems be certified by a professional engineer while the agency reconsiders issues associated with these requirements.

Since proposing the stays, the agency has heard a wide range of concerns and suggestions from stakeholders both about the 2016 rule and the proposed stays. The NODAs provide information on some of these issues and seek comments to assist in developing a final rule. The information provided in the NODAs falls into two categories: challenges to implementing the requirements in the 2016 rule that would be covered by proposed stays; and the agency's legal authority to issue a stay. EPA also is providing an updated analysis of cost savings, forgone benefits, and net benefits of the proposed two-year stay.

EPA will take public comment on the NODAs for 30 days following publication in the *Federal Register*. For more information, click here. [Parisien]

U.S. EPA Recognizes 28 CWSRF Program Successes

Area of Focus: *Water*

U.S. EPA on October 31 recognized 28 clean water infrastructure projects for excellence and innovation within the Clean Water State Revolving Fund (CWSRF) program at the 2017 National SRF Workshop hosted in Indianapolis, Indiana by the Council of Infrastructure Financing Authorities. Honored projects range from large wastewater infrastructure projects to small decentralized and agriculture projects.

EPA's Performance and Innovation in the SRF Creating Environmental Success (PISCES) program celebrates innovation

demonstrated by CWSRF programs and assistance recipients. The CWSRF is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide range of water quality infrastructure projects. Over the past 30 years, CWSRF programs have provided more than $125 billion in financing for water quality infrastructure.

"For decades the Clean Water State Revolving Fund has supported critical water infrastructure projects that help grow the American economy and support our way of life," said Mike Shapiro, Acting Assistant Administrator for EPA's Office of Water. "These projects are a testament to the power of the Clean Water State Revolving Fund in leveraging investment to meet the country's diverse clean water needs."

More about the projects and the PISCES program can be found here. Information about an ECOS project to identify and share innovative CWSRF work can be found here. [Parisien/Piper]

U.S. EPA Announces Selections for 2017 Environmental Justice Small Grants

Area of Focus: Environmental Justice

U.S. EPA has announced the award of nearly $1.2 million in competitive grants to 36 community and tribal organizations working to address environmental justice issues in their communities. The grants enable these organizations to conduct research, provide education, and develop community-driven solutions to local health and environmental issues in minority, low-income, and tribal communities.

In an effort to increase outreach to affected communities in states and territories, the 2017 Environmental Justice Small Grants (EJSG) Program placed special emphasis on proposals from under-represented states that have been awarded three or fewer EJSGs over the last five years. Of the 36 total projects selected, 23 are from underrepresented states (64%). The agency will make final awards upon successful completion of the award application process. [Poole]

E-Enterprise for the Environment

E-Enterprise

McDonnell Appointed to E-Enterprise Leadership Council

This week, ECOS President Todd Parfitt of Wyoming appointed Pennsylvania Department of Environmental Protection Secretary Patrick McDonnell to serve on the E-Enterprise Leadership Council (EELC). McDonnell fills the state EELC vacancy created when John Stine of Minnesota ended his term as ECOS President.

ECOS thanks Stine for his EELC service and welcomes McDonnell to the leadership body. [Graves]

Member News

Tormey of Iowa Elected to ACOEL Fellowship

Congratulations to Ed Tormey, General Counsel of the Iowa Department of Natural Resources, on his election last week as a Fellow of the American College of Environmental Lawyers (ACOEL). Tormey has practiced environmental law in both the private and public sectors for 27 years and also has served as Legal Services Bureau Chief at the Ohio Environmental Protection Agency.

As reported in last week's *ECOSWIRE*, former ECOS member and President Tom Burack also was one of 20 individuals from across the nation elected last week to the College Fellowship at ACOEL's 10th anniversary meeting in Charleston, South Carolina. [Parisien]

Career Opportunities

ECOS Seeks Project Manager

ECOS is accepting applications for a Project Manager to support the work of E-Enterprise for the Environment (EE) and the National Environmental Information Exchange Network (EN). The Project Manager works with senior staff at state environmental agencies, U.S. EPA, and tribes to support the operation of the EN, and to facilitate its deeply connected and formative role in EE.

To apply for this position, send a resume and cover letter here by November 30 with subject "Application for Project Manager."

See more information here. [Longsworth]

Upcoming Events

Meetings

Butler of Ohio to Participate in Disaster and Public Safety Brown Bag on the Hill

The Sea Grant Association invites interested attendees to a lunchtime briefing, *Using Science and Outreach to Assist State and Local Decision Makers in Disaster Preparedness and Public Safety*. ECOS member Craig Butler of Ohio will participate in the lunchtime discussion, which is sponsored by Congressmen Lee Zeldin of New York and Joe Courtney of Connecticut.

The event will be held **November 8 at 12-1:30 p.m.** in the Rayburn House Office Building. RSVP by November 3 to Joel Widder. [Piper]

ECOS Calls

November, December All-Member Calls

ECOS will hold its remaining two All-Member Monthly Calls in 2017 on:

- **November 16, 4-5 p.m. Eastern** on science and research
- **December 14, 3-4 p.m. Eastern** on data and analytics

Please mark your calendars now. An agenda with dial-in information will be emailed to all ECOS members prior to the call. [Swanson]

Superfund Workgroup

The ECOS Superfund Workgroup will hold its next call on **November 27 at 2:30-3:30 p.m. Eastern** to continue state-U.S. EPA discussion of implementing the recommendations of the EPA Superfund Task Force. The workgroup is chaired by ECOS Waste Committee Chair Scott Thompson, Director of the Oklahoma Department of Environmental Quality, and has the regular participation of EPA Task Force Chair Kell Kelly, Senior Advisor to the Administrator, and other EPA leaders.

The call will include a report-out on Superfund discussions at the recent ASTSWMO Annual Meeting by ASTSWMO CERCLA/Brownfields Subcommittee Chair Amy Brittain of Oklahoma and former ASTSWMO Past President Bonnie Buthker of Ohio. Call participants will provide input on the solutions proposed.

For more information, please contact Lia Parisien of ECOS. [Parisien]

Shale Gas Caucus

The ECOS Shale Gas Caucus (SGC) will kick off its Phase 3 cross-media webinar series on **December 6 at 2-3 p.m. Eastern** with a discussion of preventing produced water spills and leaks. Moderated by SGC Co-Chairs Dave Glatt of North Dakota and Martha Rudolph of Colorado, the call will feature Scott Anderson and Dan Mueller of the Environmental Defense Fund and Roy Hartstein of Southwestern Energy. Jim Kenney of U.S. EPA's Office of Enforcement and Compliance Assurance will follow with an announcement of an SGC success story in the area of produced water.

For more information, please contact Lia Parisien of ECOS. [Parisien]

Webinars

California on Safer Consumer Products

California's Department of Toxic Substances Control (DTSC) will hold a Safer Consumer Products program public workshop on lead-acid batteries and alternatives on **November 6** in Sacramento, California. The event will be broadcast via webinar and will cover the various uses of lead-acid batteries, the regulatory landscape they face, lithium-iron-phosphate batteries as a potential alternative in vehicles, automobile manufacturer perspectives, and issues such as recycling.

This information is being gathered as part of DTSC's work to evaluate whether lead-acid batteries should be listed as a Priority Product under California's Safer Consumer Products regulations. Public comments and questions are welcome.

Register for the in-person or webinar and download the agenda and event announcement. [Longsworth]

U.S. EPA and the Army Corps on WOTUS by Sector

U.S. EPA and the U.S. Army Corps of Engineers have announced ten teleconferences to hear from stakeholders their recommendations for revising the definition of "Waters of the United States" under the Clean Water Act. The first nine teleconferences will be tailored to specific industries, as follows, and the tenth will be open to the public at large.

The teleconferences will run throughout the fall on **Tuesdays at 1-3 p.m. Eastern** as follows:

- **November 7** scientific organizations and academia;
- **November 14** stormwater, wastewater management and drinking water agencies; and
- **November 21** general public. [Piper]

ECOS and U.S. EPA on Compliance Research Part 5

Part 5 of the Compliance Research Webinar Series entitled *Innovative Approaches to Foster Compliance – the Role of Deterrence* will be held on **November 9 at 1-2:30 p.m. Eastern**.

Dr. Sarah Stafford, a Professor at the College of William and Mary working in Economics, Public Policy, and Law, will present the basic theories of compliance and deterrence and the findings of social science research on what techniques are most effective. She also will present some innovative approaches being used in programs across the U.S. to encourage facilities to increase voluntary compliance and to decrease inadvertent violations.

The Compliance Research Webinar Series, hosted by the National Enforcement Training Institute of the U.S. EPA Office of Enforcement and Compliance Assurance and designed for ECOS and U.S. EPA, helps program administrators understand how collaboration with academics can identify effective and measureable approaches to compliance.

For more information, please contact Sonia Altieri of ECOS. [Altieri]

ITRC on Long-term Contaminant Management Using Institutional Controls

On **November 14 at 1-3:15 p.m. Eastern**, the Interstate Technology and Regulatory Council (ITRC) will host a free online training on institutional controls (ICs), which are administrative or legal restrictions that provide protection from exposure to contaminants on a site.

After attending the training, participants will be able to describe best practices and evolving trends for IC management at individual sites and across state agency programs; improve IC reliability and prevent IC failures; improve existing, or develop new, IC management programs; identify the pros and cons about differing IC management approaches; and more.

Learn more and register here. [Bodi]

U.S. EPA on Drinking Water Issues

U.S. EPA's Office of Research and Development and the Office of Water host a monthly webinar series on small drinking water systems. Their schedule for the rest of the year is:

- **November 15** - National Stormwater Calculator for Managing Runoff
- **November 28** - Lead in Schools and Selecting Lead Free Fixtures
- **December 12** - Residual Chlorine and Calibration Check for Chlorine Instruments

More information on the small systems webinars, including recordings of past webinars and how to register, is available here. [Hanson]

U.S. EPA ORD on Cyanobacteria Monitoring

U.S. EPA's Office of Research and Development will hold its next monthly Tools and Resources webinar on **November 15 at 3-4 p.m. Eastern**.

The webinar will focus on monitoring cyanobacteria with satellites, highlighting how federal agencies (EPA, NASA, NOAA and USGS) are collaborating to use real-world satellite applications that support environmental management of U.S. lakes by quantifying cyanobacterial harmful algal blooms and related water quality parameters. This webinar will also address provisional satellite derived cyanobacteria data and three software tools available to state environmental and health agencies for review and testing as part of the Cyanobacteria Assessment Network (CyAN).

Register here. [Longsworth]

ITRC on PVI: Fundamentals of Screening, Investigation, and Management

On **November 16 at 1-3:15 p.m. Eastern**, the Interstate Technology and Regulatory Council (ITRC) will host a free online training on petroleum vapor intrusion (PVI), the process by which volatile petroleum hydrocarbons released as vapors from light nonaqueous phase liquids, petroleum-contaminated soils, or petroleum-contaminated groundwater migrate through the vadose zone and into overlying buildings.

After attending this training, participants should be able to determine when and how to use the ITRC PVI document at their sites; describe the important role of biodegradation impacts on the PVI pathway (in contrast to chlorinated solvent contaminated sites); value a PVI conceptual site model and list its key components; and more.

Learn more and register here. [Bodi]

NIH on Wildfire Risk Communication and Health Effects

On **November 17 at 1-2 p.m. Eastern**, the National Institutes of Health will host a webinar on the impacts of wildfires on the health of vulnerable individuals and on communities exposed periodically to such events.

The presentations will cover how environmental exposures associated with wildfires affect human health, as well as approaches being used to develop targeted risk communication about wildfires for a variety of audiences.

Register here.

To: Kelly Poole[kpoole@ecos.org]; Alexandra Dunn[adunn@ecos.org]
From: Minoli, Kevin
Sent: Fri 10/20/2017 2:00:31 PM
Subject: Re: E&E Article quoting your 10/19/17 ABA SEER presentation

Thanks for flagging Kelly. I have learned the importance of googling yourself after appearances like this, but miss things sometimes so I appreciate you flagging it for us.
Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

From: Kelly Poole <kpoole@ecos.org>
Sent: Friday, October 20, 2017 9:53 AM
To: Alexandra Dunn; Minoli, Kevin
Subject: E&E Article quoting your 10/19/17 ABA SEER presentation

Hi Alex and Kevin,

Just in case you haven't already seen this - you are both quoted.

Best,
Kelly

EPA

Pruitt directive changing agency legal approach — official

Amanda Reilly, E&E News reporter

Published: Thursday, October 19, 2017

Kevin Minoli, acting general counsel at U.S. EPA, today spoke about a directive aimed at curbing settlements with environmental groups. @kevminlaw/Twitter

BALTIMORE — A controversial U.S. EPA directive aimed at curbing settlements with environmental groups will change how the agency's lawyers handle litigation, a top agency official said today.

EPA Administrator Scott Pruitt issued the memorandum Monday in response to what critics of the Obama administration dubbed "sue and settle." Under the practice, opponents say, environmental groups sue friendly agencies and then settle in order to advance their regulatory agendas (*Greenwire*, **Oct. 16).**

The Trump administration is concerned "that people whose rights are being affected or who are being very much impacted by a settlement are not participating in it," Kevin Minoli, acting general counsel at EPA, said at an annual American Bar Association environmental law conference here in Baltimore.

The memorandum will affect how EPA's lawyers in the Office of General Counsel and at the Justice Department approach litigation in two major ways, said Minoli, a career official who is serving as the agency's top lawyer until Congress confirms Matt Leopold, President Trump's pick to fill the position permanently.

One is the directive's instructions that EPA "seek to exclude" attorneys' fees or costs to any petitioner or plaintiff in litigation against the agency. Republican critics have long charged that environmental groups bring lawsuits against the government in order to fill their pockets with fees.

"This is a big change for us," Minoli said. "There are provisions that allow for attorneys' fees in a variety of statutes, and our instructions now from our client are to seek to exclude them."

The other "big change": that EPA reach out to states and regulated entities affected by potential settlement agreements and seek to "receive the concurrence of any affected states and/or regulated entities" before entering into a settlement with environmental groups.

"I think it's coming from the concern that people who are being impacted by the settlement are not at the table," Minoli said. "And people sometimes feel that it's beyond the statutory authority because it feels wrong to them to be impacted in a way and not be at the table."

He said that, over the last six to nine months, EPA has already begun reaching out to states that could be affected by litigation against the agency.

"We have done this sort of de-facto already," Minoli said. "So if we have a state involved that we're working with, we'll say, 'Can you get the state to say whether they like it or not?' Because that will help to move this case along."

Republicans who have long warned that environmentalists are using court

settlements to push regulatory agendas have broadly praised the new directive. Environmentalists, though, have slammed Pruitt for allowing industry to sign off on settlements and court orders.

Minoli noted, though, that Pruitt's directive only tells EPA's lawyers to "seek" concurrence: "We don't have to obtain concurrence. It doesn't say obtain concurrence."

Alexandra Dunn, executive director of the Environmental Council of the States, said in an interview on the sidelines of today's conference that her group was "very pleased" to see that the directive adopted some of its recommendations.

ECOS adopted in 2013 and updated in 2016 a resolution calling on EPA to proactively reach out to states when they could be affected by a consent decree as a result of a citizen suit.

"Sometimes the state would find out about that obligation after the consent decree was signed," Dunn said. "Telling states to check the web for a case that could change their legal obligations wasn't working for as many states as it should have."

Under the new policy, she added, "someone has to formally contact the state and let them know."

Other changes under the rule are smaller or require EPA to expand on existing practices.

Under the directive, for example, EPA is required to post potential settlement agreements online and open them for public comment. The agency already generally does this for Clean Air Act cases, but not in litigation stemming from other environmental laws.

The memorandum also requires EPA to create a searchable database of past consent decrees and post online within 15 days notices of intent to sue. The agency already posts notices — but not always within 15 days.

"Some of these provisions are going to require us to figure out exactly how to implement them, but the administrator has tasked us with not simply putting something on the web and expecting others to come and check it all the time," Minoli said.

'Deadlines are going to be met'

Many of the lawsuits that critics say fall under the "sue and settle" category arise from statutory obligations in environmental laws. Environmental groups, for example, sue to enforce deadlines that Congress wrote into the Clean Air Act. As a result of a lawsuit, a

court often sets a deadline for the agency to act.

Former Obama administration officials and environmentalists have disputed that "sue and settle" is occurring. They say that deadline lawsuits or other suits that seek to hold EPA to mandatory duties are difficult for the agency to win, and settling is often the prudent legal move. Not settling would likely result in protracted litigation and a loss for EPA.

"Pruitt has no defense to lawsuits where EPA has badly missed a legally mandated deadline," Pat Gallagher, legal director at the Sierra Club, said earlier this week. "If he insists on fighting the obvious, Pruitt will be guilty not just of failing to protect public health and the environment, but also of wasting agency resources, undermining the credibility of DOJ attorneys and burdening the courts with useless litigation."

Minoli today said that part of EPA's strategic plan under the Trump administration is to hit statutory deadlines. Plans include a "deadline board" to keep track of whether the agency is on target with specific deadlines.

"Deadlines are going to be met," he said, adding that EPA also intends to eliminate the backlog of Freedom of Information Act requests at the agency.

But he acknowledged that the goal is "hard to imagine" because the agency often falls short: "It is a breakthrough mindset of we should be complying with the deadlines that we are given by Congress. We don't know how to achieve that quite yet."

EPA, in fact, missed a key Clean Air Act deadline requiring the agency to determine by Oct. 1 which areas of the country are out of compliance with the 2015 national ozone standards.

The attainment designations start the clock for states to come up with plans to reduce ozone, which is a key component of smoggy air. Environmentalists promptly threatened to sue, saying EPA showed "blatant disregard" for the law.

John Walke, clean air director at the Natural Resources Defense Council, tweeted today that EPA's rhetoric on deadlines contradicts reality.

"The Trump EPA has missed a deadline for safer air for Americans, & many, many FOIA response deadlines," he said.

Twitter: @apeterka **Email:** areilly@eenews.net

Kelly Poole, JD
Project Manager
Environmental Council of the States
50 F Street NW, Suite 350
Washington, DC 20001

202-266-4939
kpoole@ecos.org

To: Orlin, David[Orlin.David@epa.gov]
From: Sustainable City Network
Sent: Thur 6/8/2017 12:15:14 AM
Subject: [SPAM] Top News: Bitter Reaction as Trump
Bails on Climate Accord

View this e-mail in your browser.

June 7, 2017

FROM OUR VALUED SPONSOR

Crescent Electric: High Bay LED lights have a 50,000 hour life expectancy and a 5-year warranty. Contact us for an energy audit.

Bitter Reaction as Trump Bails on Climate Accord

257 U.S. Mayors Beg to Differ

By Randy Rodgers
Publisher & Executive Editor

Some of the 257 U.S. mayors, members of the Mayors National Climate Action Agenda, who recently released an open letter to President Trump to oppose his actions thus far against climate action.

The sustainability community erupted with nearly universal dismay, outrage and resolve in the face of President Donald Trump's

decision to pull the United States out of the Paris climate agreement

FROM OUR VALUED SPONSOR

promise, pitting his administration against the 71 percent of U.S. citizens who believe climate change is a clear and present danger, and joining only the countries of Syria and Nicaragua in defiance of the accord, which was signed by nearly 200 nations.

The administration's official website at WhiteHouse.gov claims the Paris deal "created a taxpayer funded U.N. climate slush fund," an idea made popular by conspiracy theorists who believe the United Nations' effort to combat climate change is a veiled attempt to erode American sovereignty. Citing disputed facts about the cost in jobs and the "negligible" environmental benefits of the pact, Trump said the Paris Accord was "negotiated badly" by the Obama administration and imposed unrealistic carbon reductions on the U.S. "while giving countries like China a free pass for years to come."

In justifying his decision, Trump famously said, "I was elected to represent the citizens of Pittsburgh, not Paris." That statement ignored two important facts: 1) In the 2016 presidential election, Hillary Clinton won 75 percent of the vote in the city of Pittsburgh; and 2) Pittsburgh and Paris are actually on the same planet, which is really what the Paris Accord was all about.

Read More...

True North: Make your health plan more sustainable! Click here for more information.

Latest News

Cities Selected for Equitable Economic Development Fellowship

WASHINGTON -- National League of Cities, PolicyLink and the Urban Land Institute announced the selection of six additional cities for pa...

APPA, National Lab to Improve Electric Reliability

WASHINGTON -- The American Public Power Association has signed a Memorandum of Understanding with the Lawrence Berkeley National Laborat...

NY to Help Farmers Cut Energy Costs and Utilize Clean Energy

ALBANY, N.Y. -- Governor Andrew Cuomo announced the release of a comprehensive strategic plan to help farms across New York State cut energy c...

DOT Announces $527 Million in Infrastructure Grants to

Elaine L. Chao announced the Federal Aviation Administration will award $527.8...

CaGBC launches Canada's first Zero Carbon Building Standard

VANCOUVER, B.C. -- The Canada Green Building Council has taken a major step toward achieving Canada's climate change commitments with the laun...

Blue Accounting to Protect Great Lakes Source Water

ANN ARBOR, Mich. -- The Great Lakes Commission recently brought together water professionals from around the Great Lakes basin to discuss regi...

Suez. Ready for the resource revolution - Learn more at Suez-na.com

Energy Department Adds $20 Million in Research Awards

WASHINGTON -- The U.S. Department of Energy announced it is honoring additional commitments to 10 previously selected Advanced Research ...

EPA: Atlanta Area Attains 2008 8-Hour Ozone Standard

ATLANTA -- The U.S. Environmental Protection Agency announced that it is taking final action to approve the state of Georgia's request to...

Energy Department to Fund 19 Tribal Energy Projects

WASHINGTON -- The U.S. Department of Energy Office of Indian Energy Policy and Programs announced funding for 19 Indian tribes to take t...

EPA Brownfields Cleanup Funding Announced for Earth Conservancy

WASHINGTON -- The U.S. Environmental Protection Agency selected 172 communities and organizations across the country including Earth Con...

Practice Greenhealth and ACCO Announce Partnership

WASHINGTON -- Practice Greenhealth is constantly looking for

Online Course

Lean Thinking: Process Mgmt Made Easy

Sustainable City Network and NWETC have teamed up to offer this 6-hour online course June 20-22 on the Lean process improvement system.

This course will challenge your ideas about how you think about and evaluate the work you do.

Our Lean Master

ways to enrich your experience as an organizational member. One way is by c...

Product & Industry Announcements

Adventist Health System Receives Gallup Great Workplace Award

ORLANDO, Fla. -- Adventist Health System has been named a 2017 Gallup Great Workplace Award winner. This marks the seventh consecutive year th...

HHS Announces Over $70 Million in Grants to Address Opioid Crisis

WASHINGTON -- U.S. Department of Health and Human Services Secretary Tom Price, M.D., announced the availability of more than $70 millio...

Econolite Introduces EOS Traffic Control Software

ANAHEIM, Calif. -- Econolite recently introduced EOS traffic controller software. EOS is a next-generation, easy-to-use, web-based user interf...

Orion Lighting to Upgrade VA Hospitals to LED Lighting

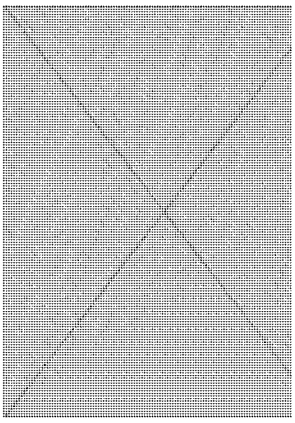
MANITOWOC, Wis. -- Orion Energy Systems, a designer and manufacturer of high performance, energy-efficient LED retrofit lighting products, ann...

Lockheed Martin Selected for DOE to Improve Energy Efficiency at Federal Facilities

DALLAS -- Lockheed Martin has been selected for a U.S. Department of Energy contract to improve energy and water efficiency at federal ...

Applied Medical Installs Nearly Three Megawatts of Solar

RANCHO SANTA MARGARITA, Calif. -- Applied Medical, a developer and provider of minimally invasive surgical devices, announced the completion o...



Vol. 23: Read it now

certified instructor, Brion Hurley, is principal Lean consultant at Rockwell Collins. He will introduce the history of Lean concepts, derived from the Toyota Production System,

and explain how and why they have come full-circle back to the United States.

Results of Lean initiatives have led to increased customer and stakeholder satisfaction, reduced costs, reduced risks, increased sales, and more flexible and agile organizations. Perhaps the largest benefit has been more engaged employees, where people enjoy the work they do.

Examples of Lean successes can be found within city and state agencies, utilities, nonprofits, law firms, military, public schools, startup companies, movie studios and even farming!

Read more...

Online Course

Creating a Sustainability Strategy

Sustainable City Network will present a webinar series in July for any personnel who are responsible for developing sustainability plans, greenhouse gas emission inventories, climate

Sustainable City Network operates a website (www.sCityNetwork.com), customized e-newsletters, online training, conferences and other interactive tools dedicated to providing quality and timely information on sustainability products, services and best practices in business, government, education and healthcare.

Privacy Policy | Contact Us | About Us

Sustainable City Network
801 Bluff St
Dubuque, IA 52001
563.588.3853

Sent to Orlin.David@epa.gov. Unsubscribe | Update Profile

The 6-hour online course, Creating a Sustainability Strategy for Your Organization, will be delivered live on July 11-13. Sessions will be recorded so registrants may attend live or via on-demand streaming video.

This course, featuring veteran instructor Antonia Graham, will focus on the implementation and strategic thinking that is required to implement a Sustainability Plan. This course will teach you how to incorporate storytelling and systems thinking into a strategic plan that gets your plan implemented and enables you to move the needle further and faster to create a more sustainable community.

This course will be presented in three 2-hour sessions held on consecutive days, July 11-13. (Group rates available on the registrations page.)

Sustainable City Network operates a website (www.sCityNetwork.com), customized e-newsletters, online training, conferences and other

government, education and healthcare.
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Sent to Orlin.David@epa.gov. Unsubscribe | Update Profile

.

To: Page, Steve[Page.Steve@epa.gov]
From: Janice Nolen
Sent: Wed 11/9/2016 9:29:39 PM
Subject: RE: State and Tribal Recommendations for 2015 Ozone Area Designations

Steve,

Thank you so much.

Janice

Janice E. Nolen
American Lung Association
Direct: Ex. 6

From: Page, Steve [mailto:Page.Steve@epa.gov]
Sent: Wednesday, November 9, 2016 4:28 PM
To: Janice Nolen <Janice.Nolen@lung.org>
Subject: FW: State and Tribal Recommendations for 2015 Ozone Area Designations

Janice,

Following up on our communication last week, here is the link to the information you requested. Call me if you have any questions.

Steve

From: Cortelyou-Lee, Jan
Sent: Wednesday, November 09, 2016 4:26 PM
To: Page, Steve <Page.Steve@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: State and Tribal Recommendations for 2015 Ozone Area Designations

Steve – I'm following up on Janice Nolen's check-in last week on the state and tribal designation recommendations for the 2015 ozone standards. All of the letters we've received are posted at: https://www.epa.gov/ozone-designations/ozone-designations-regulatory-actions.

Let me know if you have any questions.

Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

Cell: Ex. 6

To: epa@lists.4cleanair.org[epa@lists.4cleanair.org]
From: epa@lists.4cleanair.org
Sent: Thur 11/9/2017 10:28:36 PM
Subject: Fwd: The Washington Update

Begin forwarded message:

From: Miles Keogh <mkeogh@4cleanair.org>
Date: November 9, 2017 at 5:02:09 PM EST
To: "washington_update@lists.4cleanair.org" <washington_update@lists.4cleanair.org>, "members@lists.4cleanair.org" <members@lists.4cleanair.org>
Subject: The Washington Update
Reply-To: Miles Keogh <mkeogh@4cleanair.org>

Friends,

We're sending the *Washington Update* a day early to accommodate Veteran's Day tomorrow. If you're a veteran, thanks for your service! Click here for the highlights of the week:

http://www.4cleanair.org/sites/default/files/Documents/111017wklyupdate.pdf

- The Senate's confirmation of Bill Wehrum as AA of EPA's Air Office,
- EPA's designation of attainment/unclassifiable areas under the 2015 ozone NAAQS,
- Release of an NPRM to repeal the glider provisions of the Phase 2 truck rule,
- A Senate confirmation hearing for nominees for two key environmental jobs in the Administration,
- Oral argument on the Brick MACT rule,
- Publication of EPA's NODAs for proposed stays of the NSPS for the oil and gas sectors,
- Publication of a notice announcing a public hearing and comment period extension for the proposed CPP repeal,
- Letters to the EPA Administrator on his recent directive related to Federal Advisory Committee membership,

- A House hearing on energy efficiency bills,
- Motions to govern future proceedings in the ozone designations litigation,
- The start of COP 23 – the UN climate change conference - in Bonn, Germany,
- NHTSA's revised schedule for MY 2022-2025 CAFE standards for light-duty vehicles and
- An extension to the comment period for the Portland cement proposal.

Be sure to read to the end to see what's on tap for next week!

Have a great weekend! My best, Miles

PS – keep sending those fridge magnets from your state or local community for us to proudly display on the refrigerator here at HQ! We've gotten about 20 and we absolutely love them. We're posting pictures of them on twitter at @WeAre4CleanAir.

Miles Keogh

Executive Director

National Association of Clean Air Agencies

444 North Capitol Street, NW, Suite 307

Washington, DC 20001

Phone: Ex. 6

mkeogh@4cleanair.org

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To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Harvey, Reid[Harvey.Reid@epa.gov]; Page, Steve[Page.Steve@epa.gov]
Cc: Field, Andrea[afield@hunton.com]; Jaber, Makram[mjaber@hunton.com]
From: Knudsen, Andrew D.
Sent: Fri 5/12/2017 7:59:26 PM
Subject: Comments of Utility Air Regulatory Group, Docket No. EPA-HQ-OA-2017-0190
UARGcomments051217-c.pdf
Exhibits1to3-c.pdf

Dear Sirs,

Attached is a courtesy copy of the Utility Air Regulatory Group's comments responding to EPA's request for input on its evaluation of existing regulations pursuant to Executive Order 13777. These comments have also been filed in Docket No. EPA-HQ-OA-2017-0190 on www.regulations.gov. If you have any questions about this matter, please contact Andrea Field at Ex. 6 or afield@hunton.com.

Sincerely,

Andrew Knudsen

HUNTON & WILLIAMS

Andrew Knudsen

Associate

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p Ex. 6

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May 12, 2017

Samantha K. Dravis
Regulatory Reform Officer and
Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
Mail Code 1803A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Submitted via Electronic Mail and via Regulations.gov

Utility Air Regulatory Group's Response to EPA's Request for Comments on Regulations Appropriate for Repeal, Replacement, or Modification Pursuant to Executive Order 13777, 82 Fed. Reg. 17,793 (Apr. 13, 2017): Docket ID No. EPA-HQ-OA-2017-0190

Dear Ms. Dravis:

This letter is submitted in response to the U.S. Environmental Protection Agency's ("EPA" or "Agency") April 13, 2017 *Federal Register* notice[1] seeking input from the public to inform the Agency's evaluation of existing regulations that may meet the criteria outlined in Executive Order 13777[2] for repeal, replacement, or modification. More specifically, the notice asks commenters to identify regulations that, among other things, "are outdated, unnecessary, or ineffective; impose costs that exceed benefits; . . . or . . . derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified,"[3] in accordance with the language of Executive Order 13777.

The Utility Air Regulatory Group ("UARG") recommends that EPA examine whether the regulations identified below meet the criteria of Executive Order 13777. UARG is a not-for-profit association of individual electric generating companies and national trade associations. Since 1977, UARG has participated on behalf of certain of its members collectively in scores of Clean Air Act ("CAA" or "Act") administrative proceedings that affect electric generators and in litigation arising from those proceedings. UARG's 40 years of participation in CAA rulemakings and litigation has provided it unique insight as to which CAA programs are

[1] 82 Fed. Reg. 17,793 (Apr. 13, 2017).
[2] 82 Fed. Reg. 12,285 (Mar. 1, 2017).
[3] 82 Fed. Reg. at 17,793.

designed and work as Congress intended, which programs are overly burdensome or costly, and which programs are unlawful or unnecessary.

Many of the recommendations set out below are described in greater detail in materials that UARG has previously filed with EPA and reviewing courts. These materials include rulemaking comments, technical expert reports, petitions for reconsideration, and court pleadings concerning Agency actions that UARG believes to be unlawful, unjustified, or unduly burdensome or costly. UARG appreciates the opportunity to provide input on this matter and invites Agency representatives and others in the administration to meet with UARG concerning the information that we are providing today.[4]

[4] Dominion Energy does not join in these comments.

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I. Climate Change-Related Rules

A. Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015), codified at 40 C.F.R. Part 60, Subpart UUUU

EPA has already commenced review of this rule to determine whether it is appropriate to "initiate proceedings to suspend, revise or rescind the Clean Power Plan."[5] Any replacement or revision to the Clean Power Plan under CAA § 111(d) must adhere to the statutory confines of section 111 of the CAA and must: (i) be based on a "best system of emission reduction" that can be applied at the individual electric generating units subject to the rule; (ii) adhere to the requirement of section 111(d) of the CAA and its implementing regulations that states (and EPA when it is acting on behalf of a state) be allowed to prescribe less stringent standards for certain units on an as-needed, case-by-case basis; and (iii) adhere to the requirement of section 111(d) of the CAA that the remaining useful life of the unit be taken into account. Any replacement rule should also allow for compliance flexibility. Likewise, UARG encourages EPA to acknowledge that once it has promulgated emission guidelines for a source category, the CAA does not give the Agency authority to revisit those guidelines and make them more stringent. *See* Section VI.A below.

B. Carbon Dioxide New Source Performance Standards for New, Modified, and Reconstructed Electric Generating Units, 80 Fed. Reg. 64,510 (Oct. 23, 2015), codified at 40 C.F.R. Part 60, Subpart TTTT

EPA has already commenced review of this rule to determine whether it is appropriate to "initiate proceedings to suspend, revise or rescind the Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units."[6] As part of its comments on EPA's proposed performance standards and its petition for reconsideration of the final standards, UARG engaged experts to prepare numerous technical reports explaining to EPA why the performance standards EPA proposed (and later finalized) were neither based on adequately demonstrated systems of emission reduction nor achievable; these technical reports are available in the rulemaking docket.[7]

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[5] 82 Fed. Reg. 16,329 (Apr. 4, 2017).

[6] 82 Fed. Reg. 16,330 (Apr. 4, 2017).

[7] *See* UARG Comments on Proposed GHG NSPS for New Electric Generating Units ("EGUs") at Attachments 1-3, 5, 9, 11 (May 9, 2014), EPA-HQ-OAR-2013-0495-9666; UARG Comments on Proposed GHG NSPS for Modified and Reconstructed EGUs at Attachments B, C, G, K (Oct. 16, 2014), EPA-HQ-OAR-2013-0603-0215; UARG Petition for Reconsideration of Final GHG NSPS at Exhibit J (Dec. 22, 2015), EPA-HQ-OAR-2013-0495-11894.

Any replacement or revision to the greenhouse gas ("GHG") standards of performance for new, modified, and reconstructed electric generating units must adhere to the statutory confines of section 111 of the CAA, must be based on a "best system of emission reduction" that has been adequately demonstrated, and must be achievable by the individual electric generating units subject to the rule.

Of particular note, any replacement or revision to these standards of performance cannot, for the purposes of determining the "best system of emission reduction," take into account technology that received funding or tax subsidies under the Energy Policy Act of 2005, as consideration of those technologies for that purpose is prohibited by that Act.

C. Greenhouse Gas Mandatory Reporting Rule ("GHG MRR"), codified at 40 C.F.R. Part 98

Under the fiscal year 2008 Consolidated Appropriations Act, Congress authorized funding for EPA to develop and publish a rule "to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States."[8] The joint explanatory statement accompanying the legislation directed EPA to use its existing authority under the CAA (e.g., authority under CAA § 114) to develop a mandatory GHG reporting rule covering those upstream production and downstream sources the Administrator deems "appropriate," and to determine "appropriate thresholds" and frequency for reporting.[9] Congress also authorized EPA to rely on the "existing reporting requirements for electric generating units under section 821 of the 1990 CAA Amendments."[10]

The reporting program has resulted in facilities expending enormous resources tracking, quality assuring, and reporting vast amounts of information. EPA also continues to spend significant resources for both its own staff and Agency contractors to implement the GHG MRR and its electronic reporting requirements. Since its initial promulgation in October 2009, EPA has revised the regulation dozens of times. Although UARG understands that many of these rule revisions have been directed at correcting errors or simplifying data collection and reporting, the need for so many revisions underscores the complicated nature of the program.

In the past, UARG has questioned the "practical utility"[11] of much of the collected information and offered suggestions for simplification of the program. For example, under

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[8] Pub. L. No. 110–161, 121 Stat. 1844, 2128 (2007).

[9] 74 Fed. Reg. 16,448, 16,454 (Apr. 10, 2009).

[10] *Id.* (internal quotation marks omitted).

[11] EPA's authority to collect information under CAA § 114 is limited by the Paperwork Reduction Act and its implementing regulations. To require a data collection, EPA must

Subpart C, which covers general "stationary fuel combustion sources," the term is defined simply as a device that combusts fuel and does not require that the device be used for any particular purpose.[12] As a result, facilities with total emissions above the rule's applicability threshold must include in their facility-wide calculation miscellaneous combustion devices, like small gas-fired heaters, stoves, lawn mowers, or even hot water heaters. Reporting GHG emissions from such miscellaneous devices is time consuming and the information is of little value. UARG previously asked EPA either to define more narrowly what type of device triggers reporting or to adopt a *de minimis* threshold for reporting emissions from such devices at a stationary fuel combustion source.[13]

Now that the program has been in place for more than seven years, and EPA has provided Congress the information it sought, EPA should review how all of the information being collected has been used and whether the Agency's assumptions about the information's "practical utility" are correct. EPA should use this information to tailor the program so that it provides a significant "net benefit" consistent with the objectives of Executive Order 13777. At a minimum, UARG encourages EPA to establish a *de minimis* cut-off for reporting emissions from miscellaneous activities and streamline by "auto-populating" any emissions already being reported under another federal regulatory program, such as CO_2 emissions data collected under 40 C.F.R. Part 75.

In addition, as part of the rulemakings discussed in Sections I.A and I.B above, EPA amended Part 98 to impose additional reporting requirements on owners of electric generating units that transfer captured carbon dioxide to sites reporting under Subpart RR, while also requiring units to transfer their captured carbon dioxide to Subpart RR reporting sites if they wish to rely on carbon capture to meet an applicable emission limit or earn emission reduction credits. EPA should reconsider this requirement, which is unduly burdensome, costly, and does not have any environmental benefit.

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demonstrate the "practical utility" of the covered information. 5 C.F.R. § 1320.5(d)(1)(iii). Under 5 C.F.R. § 1320.3(l),

> *Practical utility* means the actual, *not merely the theoretical or potential,* usefulness of information.... In determining whether information will have 'practical utility,' OMB will take into account whether the agency demonstrates *actual timely use* for the information....

(emphases added).

[12] 40 C.F.R § 98.30(a).

[13] *See, e.g.*, UARG Comments on Proposed GHG MRR (June 9, 2009), EPA-HQ-OAR-2008-0508-0493.

II. Cross-State Air Pollution Rule ("CSAPR") Update Rule

EPA should reconsider and modify certain aspects of the Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards ("NAAQS") (known as the "CSAPR Update Rule").[14] The CSAPR Update Rule establishes stringent "ozone-season" (May-through-September) budgets for additional limits on emissions of nitrogen oxides ("NOx") from fossil fuel-fired electric generating units, beginning this month, in each of 22 states: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas. Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The rule is a new regulatory program that imposes costs exceeding any reasonable measure of projected benefits. Indeed, EPA's own modeling showed that the emission reductions required of upwind states under the CSAPR Update Rule are disproportionate to the relatively limited projected reductions in downwind ozone concentrations that the rule's emission limits are estimated to produce.[15] Furthermore, if left unmodified, the CSAPR Update Rule threatens jobs in the energy sector because its stringent emission caps can be expected to have the effect of restricting fuel choice.

UARG filed its petition for reconsideration of the CSAPR Update Rule with EPA on December 23, 2016. At least eight other petitions for reconsideration of the rule are pending before EPA.[16] The CSAPR Update Petition describes several aspects of the rule that EPA should reconsider, including: (i) EPA's reliance on modeling projections to identify downwind areas to be addressed by the rule, in disregard of real-world air quality conditions;[17] (ii) EPA's use of an unjustifiably low one-percent-of-NAAQS "contribution threshold" to "link" upwind states to downwind receptors and thereby to subject those states to additional regulation under the rule;[18] and (iii) EPA's failure, in conducting its air quality modeling, to properly account for effects of emissions from non-U.S. sources, which no state has the authority or ability to regulate.[19] Additional background regarding concerns with EPA's CSAPR Update Rule methodology is provided in the CSAPR Update Petition and in UARG's rulemaking comments submitted to

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[14] 81 Fed. Reg. 74,504 (Oct. 26, 2016).

[15] *See* UARG's Petition for Partial Reconsideration of the CSAPR Update Rule at Section X (Dec. 23, 2016) ("CSAPR Update Petition"), https://www.epa.gov/sites/production/files/2017-01/documents/the_utility_air_regulatory_group_0.pdf.

[16] *See* https://www.epa.gov/airmarkets/petitions-reconsideration-received-csapr-update.

[17] CSAPR Update Petition at Sections I & II.

[18] *Id.* at Section III.

[19] *Id.* at Section IV.

EPA on the December 2015 proposed version of the CSAPR Update Rule.[20] In addition, several petitions for judicial review of the CSAPR Update Rule have been filed and are pending in the U.S. Court of Appeals for the D.C. Circuit, including petitions for review filed by UARG, Murray Energy Corporation, many other industry parties, and several states (Alabama, Arkansas, Ohio, Texas, Wisconsin, and Wyoming) (*Wisconsin v. EPA*, No. 16-1406 & consolidated cases).

EPA should promptly reconsider and modify key elements of the CSAPR Update Rule, as identified in UARG's CSAPR Update Petition, to alleviate unnecessary, costly, and counterproductive regulatory burdens.[21] In doing so, EPA should, for example, consider, propose, and promulgate changes that would increase the levels of states' emission budgets based on corrections to and further review of the existing rule, as well as changes that would appropriately reform EPA's methodology for addressing interstate transport, as described in the attached CSAPR Update Petition and UARG's rulemaking comments.[22] In addition, based on its review and reconsideration of the CSAPR Update Rule and its methodology, EPA should, to the extent supported by appropriate analysis, issue a determination identifying states that currently are subject to that Rule but that do not contribute significantly to nonattainment of the 2008

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[20] *See* UARG Comments on Proposed CSAPR Update Rule (Feb. 1, 2016), EPA-HQ-OAR-2015-0500-0253. UARG also submitted supplemental comments on June 1, June 9, and August 16, 2016, addressing information that became available after the deadline for submitting comments on the proposed rule. UARG's supplemental comments are attached to the CSAPR Update Petition as Appendix A to that document.

[21] UARG emphasizes that it will be important for EPA, as it reconsiders the CSAPR Update Rule, to ensure that states may continue to rely on compliance with the NOx and sulfur dioxide ("SO_2") emission limits in CSAPR itself to satisfy "best available retrofit technology" ("BART") requirements for EGUs under the CAA's visibility protection program, as provided in 40 C.F.R. § 51.308(e)(4) (as promulgated at 77 Fed. Reg. 33,642, 33,656 (June 7, 2012)). *See also* 81 Fed. Reg. 78,954, 78,961-64 (Nov. 10, 2016) (describing EPA's sensitivity analysis reaffirming the validity of the Agency's determination that participation in CSAPR is a valid BART alternative).

[22] As noted in the CSAPR Update Petition, EPA in reviewing and reconsidering the CSAPR Update Rule should not make any change that would result in imposition of an ozone-season NOx emission budget for any state that is more stringent than the budget for that state under the existing rule. EPA also should not make any change that would affect the continuing validity and effectiveness of the parts of the CSAPR Update Rule in which EPA determined that: (i) Florida, North Carolina, and South Carolina are excluded from the ozone-season NOx program under both the original CSAPR and the CSAPR Update Rule; and (ii) Georgia is not subject to any obligations with respect to interstate transport for ozone NAAQS beyond those established for that state in CSAPR itself.

ozone NAAQS in (and do not interfere with maintenance of that NAAQS by) any other state and, consequently, remove those states from coverage under the CSAPR Update Rule.

III. Regional Haze and Other Visibility Regulations

EPA should reconsider and modify certain aspects (described below) of its January 10, 2017 visibility rule revisions that, if left unmodified, will impose unnecessary and counterproductive regulatory costs and other burdens.

Sections 169A and 169B of the Act and EPA regulations at 40 C.F.R. §§ 51.300-51.309 require states to adopt and submit state implementation plans ("SIPs") to achieve "reasonable progress" toward a national goal of preventing and remedying impairment of visibility in certain national parks and wilderness areas, to the extent visibility impairment in those areas results from manmade air pollution. The CAA's visibility program generally requires states to evaluate emission sources or source categories for potential emission controls to help achieve reasonable progress. Although Congress intended that states be the principal decisionmakers in this area, in many instances over the past eight years, EPA improperly assumed the states' role.

During the first "planning period" under the visibility program's "regional haze" provisions—a period that began in 2008 and will end in 2018—the primary regulatory driver was the CAA's BART requirement applicable to many EGUs and industrial sources. Now that decisionmaking on BART is complete for most states, the main focus of the upcoming second planning period, which will run from 2018 to 2028, will be implementation of the CAA's reasonable progress requirement.

EPA substantially amended many elements of its visibility protection regulations in its January 10, 2017 rule.[23] Contrary to the version of that final rule as signed on December 14, 2016 (which would have taken effect 30 days after publication in the *Federal Register*), the final rule as published on January 10 was made effective immediately in order to evade the incoming Administration's normal regulatory review and its "regulatory freeze" pending that review. The January 10 rule is the subject of three petitions for administrative reconsideration filed with EPA and eleven petitions for review in the U.S. Court of Appeals for the D.C. Circuit (*Texas v. EPA*, No. 17-1021 and consolidated cases). UARG filed a petition for administrative reconsideration[24] and a petition for judicial review of the rule. EPA has not yet responded to UARG's petition for reconsideration. As described below and in the Visibility Rule Petition, the rule has several provisions that EPA should now reconsider and repeal or modify.

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[23] 82 Fed. Reg. 3078 (Jan. 10, 2017).

[24] *See* UARG Petition for Partial Administrative Reconsideration of Amended Visibility Requirements (Mar. 13, 2017) ("Visibility Rule Petition") (attached as Exhibit 1).

When Congress enacted the CAA's visibility provisions, it made clear the states have broad discretion in implementing the program. The D.C. Circuit recognized that principle in the leading case in this area, *American Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002). As the program was implemented during the previous administration, however, EPA frequently failed to give the deference that it owed to state decisions and often supplanted reasonable state regulatory plans with more stringent and costly federal control requirements in many states, including Arizona, Arkansas, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, Utah, and Wyoming.

To address these problems, EPA should modify its January 10, 2017 regional haze rules to emphasize the breadth of state authority and to make clear EPA will not second-guess state determinations. EPA should do this by, for instance, making clear that states are free to decide how to consider and assess each of the statutory "reasonable progress" factors, including the costs associated with additional emission controls, and whether visibility improvements resulting from further controls will be substantial enough to warrant imposing those controls.

Although some parts of the January 10, 2017 rule make common-sense revisions that should be preserved—such as a three-year extension, from July 2018 to July 2021, of states' deadline to develop and submit SIPs for the second planning period—other parts of that rule create problems that require additional regulatory action to make necessary modifications. For example, the rule purports to impose on states an improper interpretation—adopted in the last Administration, over many stakeholders' objections—of the relationship between two key elements of the regional haze program: the requirement that states determine and adopt "reasonable progress goals" and the requirement that states identify specific emission control measures to include in "long-term strategies" to achieve reasonable progress. The January 10, 2017 rule requires states to first identify all measures to be included in the state's long-term strategy and then to calculate reasonable progress goals based on the degree of visibility improvement that computer modeling projects those measures will achieve. This aspect of the rule subverts the normal regulatory process by making states' determinations of reasonable progress goals an afterthought and compelling states to consider regulation even where it is unnecessary to stay on track toward reasonable visibility objectives. States should instead be free to develop reasonable progress goals they deem appropriate for a given area and then to determine which specific measures should be included in long-term strategies to achieve those goals.

The January 10, 2017 rule also has several other provisions that EPA should reconsider and modify—including (among others) provisions concerning the "uniform rate of progress" and provisions addressing states' consultation processes with other states and with federal land

management agencies. A detailed description of how EPA should address and reform these and other aspects of the rule is in UARG's Visibility Rule Petition.[25]

Consistent with Executive Order 13777, revising EPA's visibility rules as recommended in this comment letter and in UARG's Visibility Rule Petition would alleviate unnecessary regulatory burdens and would be consistent with applicable law. Such revisions would advance the Executive Order's objective of avoiding regulation that unnecessarily imposes costs that outweigh benefits and that inhibit job creation and economic growth.

IV. Regulation of Hazardous Air Pollutants

A. Compliance Provisions of the Mercury and Air Toxics Standards ("MATS") Rule, codified at 40 C.F.R. Part 63, Subpart UUUUU

The MATS Rule, regulating hazardous air pollutants from coal and oil-fired electric generating units, is among the most expensive and burdensome rules EPA has ever promulgated. Although the most significant costs associated with the rule derive from purchase, installation, and use of emission control technologies, the task of demonstrating compliance under the rule through periodic performance testing, continuous emissions monitoring, recordkeeping, and reporting also is costly. Some of those compliance demonstration costs are unavoidable, but other costs and burdens are avoidable. Rules that are written clearly and that offer flexibility—where that can be achieved without sacrificing environmental protections—provide the greatest "net benefit." Unfortunately, the MATS Rule has many provisions that are internally inconsistent, ambiguous, or inflexible, each of which adds significantly to the cost and burden of complying with the rule.

Although the current rule is the product of multiple rulemakings over a period of more than 5 years, those successive rulemakings have not fully addressed the rule's overall compliance burdens. The 2012 rule contained numerous errors and problems, many of which are described in detail in UARG's first petition for administrative reconsideration.[26] When EPA conducted a reconsideration rulemaking on a few of the issues in the rule pertaining to periods of startup and

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[25] As noted above and in the Visibility Rule Petition, one provision of the January 10, 2017 rule is an adjustment, from July 2018 to July 2021, of the deadline by which states must submit SIPs for the second planning period. UARG joins numerous states and other stakeholders in supporting that deadline adjustment and urges EPA *not* to reconsider that element of the rule.

[26] *See* UARG Petition for Reconsideration of MATS Rule at Section VI (Apr. 16, 2012), EPA-HQ-OAR-2009-0234-20180.

shutdown, the Agency's 2014 reconsideration rule created more problems than it resolved.[27] UARG raised those problems and other longstanding issues in comments on the Agency's 2015 proposed "Technical Corrections" to the MATS Rule.[28] Although EPA resolved some of the issues from the prior two rulemakings in its 2016 Technical Corrections rule, a lot of work remains to be done to make the rule clear, consistent, and appropriately flexible. Even after improvements to the rule in the Technical Corrections, facilities are struggling to interpret and reconcile ambiguous and inconsistent provisions. They also remain subject to overly restrictive requirements for the conduct of performance tests that could result in operation of units that otherwise would not operate, simply to conduct tests to measure emissions. This is unnecessary, costly, and grossly inefficient.

EPA currently is in the middle of another MATS-related rulemaking, this one focused on improving the electronic reporting requirements of the MATS Rule by allowing all reports to be submitted using the Emissions Collection and Monitoring Plan System ("ECMPS") software system already used by utilities under the Acid Rain Program and CSAPR. Although UARG supports that change, UARG members are concerned that the burdens associated with some of the very detailed electronic reporting EPA has proposed will outweigh the cost savings associated with the move to ECMPS. EPA and utilities also cannot successfully implement the electronic reporting requirements without a common understanding of what other substantive compliance provisions in the rule require. As a result, in comments on that proposal, UARG again asked EPA to resolve some of the issues UARG has identified in the existing rule, in addition to requesting changes in the volume of new information EPA has proposed be submitted electronically.[29]

The MATS Rule has the potential to be less costly. EPA should use the opportunity of the ongoing rulemaking to work with UARG to achieve that end by resolving the issues that remain in the existing rule's compliance procedures, and addressing UARG's concerns about the proposed revisions.

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[27] EPA ultimately denied reconsideration on the remainder of UARG's 2012 petition without addressing the merits of UARG's concerns regarding the compliance provisions, concluding only that it had met its procedural obligations under CAA § 307(d)(7) to solicit comment on the rule. EPA, Denial of Petitions for Reconsideration of Certain Issues: MATS and Utility NSPS (Mar. 2015), EPA-HQ-OAR-2009-0234-20493.

[28] *See* UARG Comments on Proposed Technical Corrections (Apr. 3, 2015), EPA-HQ-OAR-2009-0234-20483.

[29] *See* UARG Comments on Proposed MATS Electronic Reporting Rule (Nov. 15, 2016), EPA-HQ-OAR-2009-0234-20609.

B. Renewed Analysis of Potentially Delisting Natural Gas-Fired Stationary Combustion Turbines from Regulation Under CAA Section 112

Gas-fired combustion turbines make up a large and growing portion of the nation's electric generating fleet, and they are an essential part of maintaining electric reliability in the United States. But for over a decade these sources have been in legal limbo with respect to their regulatory status under the CAA's regulatory provisions governing hazardous air pollutants ("HAPs"). The resulting uncertainty presents risks to combustion turbine owners that should be addressed by EPA.

EPA listed stationary combustion turbines as a source category for regulation under section 112 of the Act in 1992 and promulgated emission standards limiting HAP emissions from new and reconstructed turbines in 2004.[30] However, almost immediately, EPA proposed to remove natural gas-fired combustion turbines from the list of sources subject to regulation under section 112.[31] Based on EPA's own analysis and on a petition for delisting submitted by the Gas Turbine Association, the Agency made a preliminary finding that gas-fired turbines meet the CAA's health-protective criteria for delisting.[32]

EPA's 2004 analysis found that even using conservative assumptions about exposure and risk, emissions from gas-fired combustion turbines would meet these health-protective statutory criteria. Accordingly, EPA proposed to delist gas-fired turbines from section 112 regulation. Recognizing that it would be irrational to require compliance with a rule it intended to revoke, EPA also issued a stay of the emission standards for gas-fired turbines until the Agency could take final action on its delisting proposal.[33]

However, EPA never took final action on its delisting proposal. According to the terms of the stay, if EPA ultimately decides not to delist gas-fired turbines, then the standards will spring into effect for any turbine built after January 2003. This twelve-year waiting period has generated significant regulatory uncertainty for owners of gas-fired combustion turbines, who cannot say for certain whether or not their turbines built in the interim must comply with the emission standards. That uncertainty is compounded by EPA's upcoming Risk and Technology

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[30] 69 Fed. Reg. 10,512 (Mar. 5, 2004).
[31] 69 Fed. Reg. 18,327 (Apr. 7, 2004).
[32] *Id.*; *see* CAA § 112(c)(9)(B) (describing criteria).
[33] 69 Fed. Reg. 51,184 (Aug. 18, 2004).

Review ("RTR") for stationary combustion turbines: turbine owners cannot be sure whether EPA will further tighten the standards that might ultimately apply if the stay is lifted.[34]

EPA should revisit its delisting proposal for gas-fired combustion turbines and assess whether those sources still meet the statutory criteria for delisting. The Agency's previous review showed that gas-fired turbines' HAP emissions posed minuscule risks to health and the environment. If the delisting criteria are still satisfied, EPA should promptly delist gas-fired turbines from regulation under section 112.[35] If gas-fired turbines are not delisted, the Agency should, as appropriate, provide for a transition mechanism for gas-fired turbines constructed since 2003, and EPA should be careful in the RTR proceeding not to impose revised standards that would be unduly burdensome and costly.

C. National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards for Stationary Reciprocating Internal Combustion Engines ("RICE"), codified at 40 C.F.R. Part 60 Subparts IIII and JJJJ and 40 C.F.R. Part 63 Subpart ZZZZ

EPA has promulgated a set of interrelated regulations for emissions from RICE units pursuant to both CAA § 111 (new source performance standards) and § 112 (national emissions standards for HAPs). Each set of rules identifies numerous subcategories of internal combustion engines and applies varying requirements to each subcategory based on age, size, fuel type, engine design, use, and other factors. The overlapping regulatory programs and range of subcategories have resulted in a complex set of requirements that can be difficult for source owners to navigate.

The RICE regulations generally require manufacturers to install cost-effective state-of-the-art technology to minimize emissions. UARG agrees that requiring manufacturers (rather than source owners or operators) to install these controls is a reasonable approach to regulation for these sources. But EPA has also promulgated extensive and burdensome testing, maintenance, and record-keeping requirements for owners and operators. These requirements

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[34] A federal court recently set a March 2020 deadline for EPA to complete its RTR for stationary combustion turbines (along with 19 other source categories). *Cal. Cmtys. Against Toxics v. Pruitt*, No. 15-cv-512 (TSC), 2017 WL 978974 (D.D.C. Mar. 13, 2017).

[35] Although the D.C. Circuit has ruled that CAA § 112(c)(9)(B)(i) only allows EPA to delist entire source categories (rather than subcategories), *see NRDC v. EPA*, 489 F.3d 1364 (D.C. Cir. 2007), nothing in the Act prohibits EPA from reclassifying gas-fired combustion turbines as a separate source category and delisting them. *See* CAA § 112(c)(1).

impose substantial costs with little to no benefit. Emissions from RICE sources are already small and do not warrant these onerous and needless regulations.

For example, EPA has placed unnecessary restrictions on the operation of emergency engines. These engines are limited to just 50 hours of non-emergency operation, which count toward the 100 hour annual limit for testing and maintenance. Tracking these independent uses of RICE sources is burdensome and achieves no benefit. In addition, the work practice standards for most RICE sources require servicing the unit more often than manufacturer specifications, which is inefficient and does not provide environmental benefits. Finally, for new Tier 4 engines, EPA adopted redundant requirements for both manufacturers and operators restricting operation when certain emission controls are not working properly, which serve only to hinder operators' ability to address emergency situations. These provisions are burdensome, threaten reliability, and inappropriately place manufacturers in the role of policing emergency situations.

EPA should eliminate the unnecessary requirements applicable to RICE sources and adopt clear, streamlined replacements.

V. Preconstruction Permitting Issues

A. New Source Review ("NSR") Reform

The Act's NSR program requires major stationary sources to go through an extensive, time-consuming, and costly review and permitting process prior to construction. The NSR program also applies to existing facilities if they are modified in substantial ways and if, as a result, emissions increase by significant amounts (these are known as "major modifications"). The NSR program requires, among other things, that the owner or operator of a proposed new major source or a proposed major modification obtain a pre-construction permit, which will be issued only if the owner/operator (i) demonstrates—normally through air quality modeling—that the proposed major new source or modification will not cause or contribute to a violation of air quality standards; (ii) installs the best available control technologies ("BACT") to reduce levels of specific regulated pollutants, and (iii) demonstrates that the proposed new source or modification will not cause an adverse impact on air quality-related values in federally protected lands (*e.g.*, national parks or wilderness areas).

For the first two decades of the NSR program, existing sources rarely triggered it. That is because EPA applied it in a way to be triggered only by unusual projects that would expand the capacity of the source—i.e., projects that create *new* sources of emissions. It is also because NSR is so time-consuming and expensive that sources generally avoided activities that would expand their capacities *because* they could trigger NSR.

Starting in the late 1990s, however, EPA's enforcement arm, in an effort to drive policy, filed and/or threatened a large number of lawsuits to force the installation of controls not otherwise required by the Act. To achieve this goal, EPA asserted in the lawsuits a theory of universal liability: any maintenance project—anything larger than day-to-day activity akin to changing a car's oil—is a "change" that could trigger NSR; and any such "change," if it addresses reliability, availability, or efficiency issues that the plant might have experienced in the recent past, according to the lawsuits, will "increase" total emissions as compared to the recent past and therefore will trigger NSR. More than a decade and half later, these types of lawsuits continue, with no certainty as to how the NSR program will apply to existing plants. For example, courts have reached diametrically opposite conclusions with respect to whether similar projects are considered routine maintenance, repair, and replacement ("RMRR") and thus excluded from NSR.[36] EPA's latest revision of the emissions increase provisions has, in a single case, generated five different opinions as to how these provisions should apply.[37] At a minimum, the fact that courts—and even judges within the same court—cannot agree on what these regulations mean and how they should apply in particular circumstances highlights the uncertainty these regulations have created and how inefficient their application has been in the recent past.

The NSR rules, as EPA's enforcement arm has sought to apply them to existing facilities for the last decade and a half, discourage—and potentially impose very large costs on—needed projects to maintain and improve existing plants' availability, reliability, safety, and efficiency. Those are precisely the types of projects that maintain American industry's competitiveness and are needed to cost-effectively maintain the reliability of the nation's energy systems. For these reasons, the NSR rules should be revised to remove the uncertainty surrounding their applicability and the perverse incentives they create.

B. Synthetic Minor Sources

Current NSR regulations contain a provision (40 C.F.R. § 52.21(r)(4)) stating that a synthetic minor source—i.e., a source or modification that took operational or other limitations

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[36] *Compare, e.g.*, *Nat'l Parks Conservation Ass'n v. TVA*, No. 3:01-CV-71, 2010 WL 1291335 (E.D. Tenn. Mar. 31, 2010) (finding economizer and superheater replacements RMRR); *with United States v. La. Generating LLC*, No. 09-100-JJB-CN, 2012 WL 4107129, at *4 (M.D. La. Sept. 19, 2012) (finding reheater replacements not RMRR).

[37] *See United States v. DTE Energy Co.*, 845 F.3d 735 (6th Cir. 2017) (three different opinions), 711 F.3d 643 (6th Cir. 2013) (two different opinions). The Sixth Circuit recently denied DTE Energy's petition for rehearing en banc, and currently has pending before it DTE Energy's motion to stay the mandate pending the filing of a petition for certiorari.

to remain minor—becomes subject to NSR when it "becomes a major source or major modification solely by virtue of relaxation in any enforceable limitation" established in a federally enforceable air permit. This provision was placed in the NSR regulations to prevent circumvention of those regulations—that is, sources taking limitations to avoid NSR review when they are constructed, only to seek to relax these limitations a short period thereafter.

That provision is too broad, however, in that it sweeps into its scope circumstances in which EPA's concerns about circumvention are clearly not implicated: for example, a situation in which a relaxation of the permit limits may be sought years after the initial construction. As a result, this rule unnecessarily limits production and hinders economic growth, even though the increase in emissions from the later construction is very small and would have a *de minimis* impact (i.e., even though the proposed change itself is not major). In the utility industry, the result is that generation is shifted to higher cost units, unnecessarily increasing costs for ratepayers and, in all likelihood, resulting in more (not less) emissions.

This "relaxation" provision should be revised such that it does not apply in situations in which the risk of circumvention is very unlikely or nonexistent. For example, EPA should consider whether, after a certain amount of time has passed (such as five or more years after a permit containing the operational limitation was issued), the relaxation provision should no longer apply. In these circumstances, a proposed physical or operational change should be analyzed under the base NSR rules, as it would be for any other "true" minor source or modification. Such a change to the regulations would sensibly encourage economic growth while simultaneously ensuring that any physical or operational change that is a major source or modification in its own right would be subject to preconstruction review.

C. Prevention of Significant Deterioration ("PSD") Significant Emissions Rate for Greenhouse Gases

In *UARG v. EPA*,[38] the Supreme Court held that EPA's so-called "Tailoring Rule" was unlawful in as much as it would apply the PSD and Title V permitting programs to sources based solely on their GHG emissions. Instead, the Court held, EPA's authority to regulate GHGs under PSD and Title V extends only to "anyway" sources, that is, sources that otherwise would trigger these permitting requirements for non-GHG pollutants. For these "anyway" sources, EPA could require BACT for GHGs "only if the source emits more than a *de minimis* amount of greenhouse gases."[39] On remand, EPA proposed to establish its previous Tailoring Rule threshold, 75,000 tons per year, as that *de minimis* level or "Significant Emissions Rate" (also known as a

[38] 134 S. Ct. 2427 (2014).
[39] *Id.* at 2449.

significance threshold).[40] UARG and its members filed comments supporting EPA's authority to establish a significance threshold on *de minimis* grounds, but objecting to the proposed rule's approach of merely reverse-engineering a pre-determined result—namely, the Tailoring Rule's 75,000 tons per year level—instead of applying the correct legal standard for *de minimis* authority and properly evaluating the facts and data in the record under that standard.[41] Indeed, as UARG's comments explained, applying EPA's historic and well-established approach would have yielded a significance threshold of 320,000 tons per year, four times higher than EPA's predetermined, "preferred" result. Yet, not only did the proposed rule reject any significance threshold higher than 75,000 tons per year, it arbitrarily declared that EPA would not even accept comments on such higher thresholds.

Establishing an appropriate PSD *de minimis* level for GHGs falls squarely in the category of action that would alleviate unnecessary, costly, and counterproductive regulatory burdens. EPA should withdraw the current proposal, and propose a new, higher significance threshold for GHGs.

VI. New Source Performance Standards ("NSPS") Issues

A. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016), codified at 40 C.F.R. Part 60, Subpart Cf

UARG urges EPA to grant petitions for reconsideration that are pending before the Agency regarding this rule, which revised the existing emissions guidelines for municipal solid waste landfills to make them more stringent. Although EPA possesses authority to amend regulations to correct mistakes or to streamline processes as part of its authority under section 111(d), the Agency lacks authority under that provision to revise its emission guidelines to direct states to make previously promulgated standards of performance for existing sources more stringent. UARG filed comments on EPA's proposed revision to the emission guidelines that are available in the rulemaking docket.[42] UARG is also challenging this rule (along with other Petitioners) in the U.S. Court of Appeals for the District of Columbia Circuit (*Nat'l Waste & Recycling Ass'n v. EPA,* No. 16-1371 and consolidated cases).

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[40] 81 Fed. Reg. 68,110 (Oct. 3, 2016).

[41] UARG Comments on Proposed Significance Threshold (Dec. 16, 2016), EPA-HQ-OAR-2015-0355-0089.

[42] *See* UARG Comments on Proposed Emission Guideline Revisions for Municipal Solid Waste Landfills (Oct. 26, 2015), EPA-HQ-OAR-2014-0451-0198.

B. Electronic Reporting Under the NSPS, codified at 40 C.F.R. Part 60

New source performance standards establish federally enforceable emission standards and related compliance requirements for new, modified, and reconstructed facilities in specific source categories.[43] NSPS are established by EPA, but their implementation and enforcement usually are delegated to state agencies. Reporting requirements for the NSPS are established in the general provisions in Subpart A and in individual subparts. The general provisions currently require duplicate reporting to EPA Regional Offices and delegated state agencies, generally in hard copy (although use of electronic media also is permitted for submissions to state agencies with their consent).

Electronic reporting of information to a centralized data system has the potential to reduce costs and burdens and improve accessibility of information to regulators, the regulated entities, and the public. Unfortunately, EPA's implementation of such reporting under the NSPS has done the opposite.

Beginning in 2009, EPA started inserting into individual subparts of the NSPS a requirement that facilities electronically submit certain reports to EPA using an EPA-designed software system and website that the Agency was in the process of developing. The first of those requirements took effect July 1, 2011.[44] The requirement to submit existing reports electronically to a central location has not been controversial. However, the software system EPA has specified (called the "Electronic Reporting Tool" or "ERT") is controversial because the program is outdated and difficult to use, and because it requires submission of significant volumes of information that are not necessary to demonstrate compliance with any applicable NSPS.[45] EPA's failure to relieve sources from existing duplicate paper reporting requirements also generated objections.

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[43] UARG members own and operate facilities subject to many NSPS subparts, including those applicable to steam generating units (Subparts D, Da, Db, and Dc), combustion turbines (Subparts GG and KKKK), coal preparation plants (Subpart Y), and nonmetallic mineral processing plants (Subpart OOO).

[44] *See, e.g.*, 40 C.F.R. § 60.49a(v)(4) (Subpart Da), § 60.46b(j)(14) (Subpart Db), § 60.45c(c)(14) (Subpart Dc), § 60.258(d) (Subpart Y).

[45] EPA has said it is collecting the additional information to assist in development of emission factors. Initially, EPA collected the information simply by mandating use of the ERT software. However, in 2016, EPA revised the general provisions to codify some of those reporting requirements. 81 Fed. Reg. 59,800 (Aug. 30, 2016) (revising 40 C.F.R. § 60.8(f)).

In 2015, EPA proposed to expand the electronic reporting requirement to all but a few NSPS subparts by revising the general provisions.[46] UARG's objections to the ERT and EPA's proposed expansion of the requirement are described in detail in UARG's comments on that proposal.[47]

On December 21, 2016, EPA Administrator Gina McCarthy signed a final rule that would impose many of the burdens to which UARG and others objected. The rule has not yet been published. Although that rule includes some extended deadlines, multiple promises to develop alternatives to the use of the ERT, and other improvements as a result of comments, the basic mandate of the rule is the same. If the rule becomes effective, numerous facilities will be required (at least in the short term) to electronically report significant volumes of information to EPA using the ERT, in addition to providing the same information in hard copy to any delegated state that does not waive the duplicate reporting requirement. The final rule also includes drafting errors that would inadvertently impose the new requirements on facilities EPA said it planned to exclude from the rule. If the rule is published, UARG intends to petition for administrative reconsideration.

The current NSPS electronic reporting requirements, and the planned expansion of those requirements to include many additional subparts, do not provide a "net benefit." EPA should formally withdraw the signed final rule and issue a new proposal to replace existing requirements for reporting using the ERT with a more workable electronic reporting system and to reduce the volume of information that must be reported electronically. For electric utilities, EPA should consider adapting its existing ECMPS software, which already is used by utilities to report information under the Acid Rain Program and CSAPR, to collect any additional information needed for those sources to demonstrate compliance with an applicable NSPS. As discussed further in Section IV.A above, EPA already is doing that for the MATS Rule at 40 C.F.R. Part 63, Subpart UUUUU.

Finally, EPA should act expeditiously—perhaps by direct final rule—to authorize use of electronic reporting (including email submission of electronic media) to EPA Regional Offices and to remove requirements for duplicate reporting to EPA Regions of information already electronically reported to EPA (e.g., to ECMPS or EPA's Central Data Exchange),

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[46] 80 Fed. Reg. 15,100 (Mar. 20, 2015).

[47] *See* UARG Comments on Proposed NSPS Electronic Reporting Rule (June 18, 2015), EPA-HQ-OAR-2009-0174-0093.

C. Reconsideration of the NSPS for Stationary Combustion Turbines, codified at 40 C.F.R. Part 60, Subpart KKKK

EPA promulgated the NSPS for new, modified, and reconstructed stationary combustion turbines in July 2006 as Subpart KKKK.[48] UARG filed a petition for administrative reconsideration of that rule raising several objections, including that (i) the rule's NOx standards were unachievable for large gas-fired turbines operating in simple cycle mode, (ii) the rule failed to provide a methodology to calculate compliance for operating periods when several different standards apply, and (iii) several other issues related to emissions monitoring.[49]

EPA agreed to reconsider the Subpart KKKK rule and issued a proposed reconsideration rule in August 2012.[50] Instead of simply addressing UARG's reconsideration request, EPA proposed an almost complete rewrite of the rule, creating many new problems. At the same time, the proposal failed to actually address some of the specific issues UARG raised in its reconsideration petition. Further, EPA proposed to radically alter the analysis used to determine whether an existing combustion turbine had been "reconstructed," such that commonplace, insignificant work regularly performed at turbine facilities could subject those units to the stringent standards in Subpart KKKK. UARG submitted comments explaining its objections to the proposed changes to the reconstruction analysis and other problematic aspects of the proposal.[51] EPA never finalized its proposed reconsideration rule.

EPA's proposed reconsideration rule has subjected combustion turbine owners to considerable regulatory uncertainty, making it difficult for them to anticipate the legal consequences of necessary maintenance activities or to predict what standards their turbines will ultimately need to comply with. UARG urges the Agency to address this uncertainty by issuing a supplemental proposal on reconsideration of Subpart KKKK that withdraws the 2012 proposal's changes to the reconstruction analysis and that addresses in full the issues in UARG's petition for reconsideration and its comments on the 2012 proposed rule.

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[48] 71 Fed. Reg. 38,482 (July 6, 2006).

[49] *See* UARG Petition for Reconsideration of Subpart KKKK Rule (Sept. 7, 2006), EPA-HQ-OAR-2004-0490-0325.

[50] 77 Fed. Reg. 52,554 (Aug. 29, 2012).

[51] *See* UARG Comments on Subpart KKKK Reconsideration Proposal (Dec. 28, 2012), EPA-HQ-OAR-2004-0490-0418.

D. Reconsideration of the NSPS for Coal Preparation and Processing Plants, codified at 40 C.F.R. Part 60, Subpart Y

EPA promulgated revisions to the NSPS for coal preparation and processing plants in October 2009.[52] UARG filed a limited petition for reconsideration of these Subpart Y revisions, noting that the rule was vague as to how one could determine whether an existing coal pile had been "modified" or "reconstructed" and thus become subject to Subpart Y.[53] Because coal piles are always in flux and their emissions are difficult to measure, it is unclear how EPA would determine whether an emissions rate increase occurs for the purposes of modification, or what components would be included in a reconstruction analysis. UARG also asked EPA to reconsider its imposition of the burdensome electronic reporting requirements discussed above in Section VI.B. EPA agreed to reconsider those issues but has never issued a proposed reconsideration rule.

EPA's continued failure to address the treatment of existing coal piles under Subpart Y has created substantial regulatory uncertainty within the industry, making it difficult for them to predict how certain activities at their coal piles might trigger the requirements of Subpart Y. UARG urges the Agency to issue a proposed rule responding to UARG's reconsideration petition that clarifies how existing coal piles will be treated under Subpart Y and adopts a more reasonable mechanism for electronic reporting..

E. Revisions to Test Method for Determining Stack Test Gas Velocity Taking Into Account Velocity Decay Near the Stack Walls

In 2009, EPA proposed revisions to Test Method 2H in 40 C.F.R. Part 60, Appendix A, that would reduce regulatory burdens associated with emissions testing.[54] The proposal would incorporate into Method 2H a procedure in Conditional Test Method 041 the use of which EPA was already routinely approving through source-by-source petitions. The proposal, which would make the method more accurate and require less testing, was universally supported and technically sound.[55] UARG asked EPA to move expeditiously to finalize the revisions in order to eliminate the need for source-by-source petitions. More than seven years later, the proposal has yet to be finalized. UARG urges EPA not to delay any further and finalize the revisions as proposed.

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[52] 74 Fed. Reg. 51,950 (Oct. 8, 2009).

[53] *See* UARG Petition for Reconsideration of Subpart Y Rule (Dec. 7, 2009).

[54] 74 Fed. Reg. 42,819 (Aug. 25, 2009).

[55] *See, e.g.* UARG Comments on Test Method 2H Revisions (Oct. 26, 2009), EPA-HQ-OAR-2008-0697.

VII. National Ambient Air Quality Standards

A. "Findings of Substantial Inadequacy" of SIPs and "SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," published at 80 Fed. Reg. 33,840 (June 12, 2015)

In 2015, EPA Administrator Gina McCarthy in one action issued a group of "SIP Calls" mandating that 36 states revise their previously EPA-approved SIPs, because certain provisions of those SIPs addressing emissions from industrial sources during periods of startup, shutdown, or malfunction of applicable process or control equipment ("SSM") are inconsistent with EPA's most recent interpretations of certain CAA provisions. The SIP Calls are not based on any finding of air quality impacts or finding that removing the provisions is necessary to meet other CAA goals. Rather, they are based on the conclusion that there is a "facial inconsistency" of the called SIP provisions' language with EPA's recent interpretations of certain CAA provisions, and that inconsistency renders the previously EPA-approved SIPs "substantially inadequate."

Under the CAA, states have primary responsibility for attaining, maintaining, and enforcing the NAAQS through their SIPs and EPA has only a secondary role that provides no authority to force states to adopt specific control measures. The SIP Calls are inconsistent with that system of cooperative federalism. The SIP Calls also are inconsistent with agencies' inherent responsibility to consider costs and benefits when exercising discretionary authority. UARG is currently a petitioner challenging the SSM SIP Call in the U.S. Court of Appeals for the D.C. Circuit, and the opening briefs that Industry Petitioners (including UARG), State Petitioners, and Texas Petitioners filed are available in the docket for those consolidated cases.[56]

The called SIP provisions are all designed to address the inability of sources to meet otherwise applicable emission control requirements under certain operating conditions, like SSM periods. All of the states subject to the SIP Calls have submitted (or, for revised NAAQS, will submit) demonstrations establishing that their SIP will result in attainment of the NAAQS. Many of the subject states already are achieving some or all of the NAAQS through their existing SIPs. On the other hand, the SIP Calls have imposed on states, and on EPA, the obligation to embark on a years-long and costly process of review and approval/disapproval of revised state rules and potentially development of Federal Implementation Plans. Imposition of such costs, in the absence of quantifiable benefits, also is contrary to the goals of Executive Order 13777.

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[56] *See Walter Coke, Inc. v. EPA*, No. 15-1166 (D.C. Cir. Oct. 31, 2016), ECF Nos. 1643502, 1643571, 1643769.

In short, the SIP Calls interfere with state discretion and impose significant costs and burdens without any corresponding finding of air quality-related benefit. EPA should convene a proceeding to withdraw the SSM SIP calls by applying a SIP call standard that is consistent with its limited authority under the CAA and obligation to consider the impacts of its exercise of that authority.

B. NAAQS Promulgation and Implementation

NAAQS and their implementation are at the heart of the CAA. EPA sets the NAAQS and must review them at least every five years, revising them as appropriate. Unfortunately, when the NAAQS for a particular pollutant are revised, previous NAAQS for that pollutant seem to linger forever in scattered sections of the Code of Federal Regulations. For example, NAAQS for fine particulate matter ("$PM_{2.5}$") are found in sections 50.7, 50.13, and 50.18 of 40 C.F.R. Part 50. Such scattered codification of NAAQS is at best confusing and at worst misleading. UARG recommends revision of 40 C.F.R. Part 50 to remove NAAQS that have been replaced and to consolidate the current NAAQS for each regulated pollutant in a single section of the C.F.R.

UARG also urges the Agency to consider changes that would simplify the process that it uses to set and revise NAAQS. For example, the present process involves preparation by EPA's career staff of a Policy Assessment. This document is not required by the Act. It could be eliminated, modified to reflect senior management input, or replaced by an Advance Notice of Proposed Rulemaking as was planned in 2006.[57] In addition, to the extent that risk assessment remains a part of the process, UARG urges that the assessment fully capture uncertainty about the estimated number and quality of effects. Preparation of an Integrated Uncertainty Analysis, as the National Academy of Sciences has recommended, would advance this effort.

Once NAAQS have been promulgated, rules established by EPA play a vital role in their implementation. UARG recommends revision of certain aspects of recently-promulgated NAAQS implementation rules, including EPA's March 2015 rule establishing SIP requirements for the 2008 ozone NAAQS[58] and its August 2016 rule establishing SIP requirements for the 2012 $PM_{2.5}$ NAAQS,[59] to eliminate unnecessary and duplicative requirements. Specifically,

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[57] Memorandum from Marcus Peacock, Deputy Adm'r, EPA, to Dr. George Gray, Assistant Adm'r, Office of Research & Development, & William L. Wehrum, Acting Assistant Adm'r, Office of Air & Radiation (Apr. 17, 2007), https://www3.epa.gov/ttn/naaqs/pdfs/memo_process_for_reviewing_naaqs.pdf.

[58] 80 Fed. Reg. 12,264 (Mar. 6, 2015).

[59] 81 Fed. Reg. 58,010 (Aug. 24, 2016).

UARG urges EPA to revoke the requirement for "anti-backsliding" measures for the 1997 ozone NAAQS,[60] which was replaced in 2008 by a more stringent standard for ozone.[61] Section 172(e) of the CAA requires such measures only when a NAAQS is "relaxed." In addition, UARG recommends that EPA revise its implementation rule for the 2012 $PM_{2.5}$ NAAQS to revoke the less stringent 1997 standard throughout the nation, not just in areas designated attainment.[62] Although UARG recognizes the need for continuity in the NAAQS program and therefore is not recommending that a superseded NAAQS be rendered null immediately upon promulgation of a revised one, UARG recommends that EPA revoke any superseded NAAQS a year after the effective date of area designations for the new or revised NAAQS. The revocation should be effective nationwide. States should not be required to complete an attainment demonstration (or equivalent) for the superseded NAAQS.[63]

Finally, UARG urges EPA to return to its prior approach of relying on air quality monitoring to make initial designations for areas as attainment, nonattainment, or unclassifiable. The SO_2 NAAQS promulgated in 2010 was the first NAAQS for which the Agency chose to rely on modeling predictions—rather than monitoring data—for making initial designations. Modeling is not as accurate as monitoring. EPA's preferred air quality models and required approaches to modeling are conservative by design to ensure that pollutant concentrations in ambient air are not underestimated. EPA acknowledges that its preferred AERMOD model cannot predict pollutant concentrations accurately at a given time and place. Furthermore, EPA continues to revise its AERMOD modeling system, leading to questions concerning the modeling on which designations will be based.[64]

In addition to returning to its prior approach of relying on monitoring for initial designations in the future, EPA should revise nonattainment designations that have already been

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[60] 40 C.F.R. § 51.1105.

[61] *Compare* 40 C.F.R. § 50.10, *with id.* § 50.15.

[62] *See* 81 Fed. Reg. at 58,142.

[63] *See* Comments by UARG and the American Petroleum Institute on Proposed PM NAAQS Implementation Rule at 61-64 (May 29, 2015), EPA-HQ-OAR-2013-0691-0096; *see also* UARG Comments on Proposed Implementation Rule for the 2015 Ozone NAAQS at 5-8 (Feb. 13, 2017), EPA-HQ-OAR-2016-0202-0105.

[64] *See* Memorandum from Richard A. Wayland, Div. Dir., Air Quality Assessment Div., EPA Office of Air Quality Planning & Standards, to Regional Air Dirs., Regions 1-10 (Mar. 8, 2017) (clarification of the version of the AERMOD modeling system to be used for designations in light of recent revisions of the model), https://www3.epa.gov/ttn/scram/guidance/clarification/SO2_DRR_Designation_Modeling_Clarificaiton_Memo-03082017.pdf.

made based on modeling. Several areas were designated nonattainment based on modeling in 2016,[65] and states have submitted modeling for several other areas for which designations are required by the end of 2017.[66] EPA should use its correction authority under section 110(k)(6) of the Act to replace modeling-based nonattainment designations made in 2016 with unclassifiable designations. Because of the overestimates inherent in modeled air quality, however, attainment designations based on modeling remain valid and should be retained. Furthermore, areas for which designations must be made at the end of 2017 that have not demonstrated attainment through modeling and that do not have adequate monitoring data should be designated unclassifiable; those with adequate monitoring data should be designated according to those data. EPA should also repeal its 2015 Data Requirements Rule for SO_2.[67] That rule places additional burdens on states either to perform modeling or to conduct additional air quality monitoring of SO_2 sources for designations. Although this rule requires the use of either modeling or monitoring, even the monitoring requirement exceeds what is required of states for other criteria air pollutants.[68]

VIII. Air Quality Modeling Issues

On January 17, 2017, EPA promulgated revisions to its Guideline on Air Quality Models, codified at 40 C.F.R. Part 51, Appendix W ("Appendix W").[69] This rule, which specifies models, inputs, and techniques for use in preparing SIPs and PSD permit applications, is not yet effective. Although UARG supports some aspects of the rule revisions, others are expected to make SIP preparation and obtaining permits for new or modified sources more time-consuming and costly. Specifically, UARG is concerned about new modeling requirements for sources seeking permits that emit precursors to ozone or $PM_{2.5}$. Many electric generators fall in this category. The screening tools that EPA suggests—Significant Impact Levels and Modeled Emission Rates for Precursors—are not particularly helpful in their present form.[70] The photochemical grid modeling mandated for sources not helped by these tools is time-consuming

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[65] 81 Fed. Reg. 45,039 (July 12, 2016); 81 Fed. Reg. 89,870 (Dec. 13, 2016).

[66] *See* Fact Sheet: Final Data Requirements Rule for the 2010 1-Hour SO_2 Primary NAAQS (undated), https://www.epa.gov/sites/production/files/2017-02/documents/fact_sheet_-_final_data_requirements_rule.pdf.

[67] 80 Fed. Reg. 51,052 (Aug. 21, 2015).

[68] *See* UARG Comments on the Proposed Data Requirements Rule for the 1-Hour SO_2 NAAQS (July 14, 2014), EPA-HQ-OAR-2013-0711-0075.

[69] 82 Fed. Reg. 5182 (Jan. 17, 2017).

[70] UARG Comments on Draft Guidance on Development of MERPs (Mar. 31, 2017) (attached as Exhibit 2); UARG Comments on Draft Guidance on SILs for Ozone and Fine Particles (Sept. 30, 2016) (attached as Exhibit 3).

and costly. EPA does not specify a particular model to be used, meaning the selected model must be approved on a case-by-case basis. Formal new requirements for written approval by EPA's (non-statutory) Model Clearinghouse whenever a model not specified in Appendix W is used are likely to further delay the process. Accordingly, the NAAQS Implementation Coalition, of which UARG is a member, filed a petition for reconsideration of these and other aspects of the Appendix W revisions.[71]

IX. Demonstration-of-Compliance Issues

A. Outreach on Current Rulemakings

Measures used to demonstrate compliance with emission standards and other requirements, while critical to the effectiveness of a rule, also can significantly increase the rule's cost, particularly if the rule is unclear or contains errors. EPA often initiates rulemakings with the goal of fixing such problems it has identified in rules, but does so without soliciting input from stakeholders on additional ways the rule could be improved. When UARG participates in such proceedings UARG often includes in comments suggestions for other revisions it believes would make the rule more cost effective without sacrificing environmental benefits. Unfortunately, these comments often are rejected as beyond the scope of the rulemaking because they suggest changes the Agency did not propose. To avoid this problem, before engaging in such rulemakings, EPA should solicit input from stakeholders either informally or formally on ways the rule could be made more cost-effective so that the Agency can address those suggestions in its development of the proposal and/or final rule. While some of these suggestions may not by themselves warrant initiating a rulemaking, once EPA decides to initiate a rulemaking it should make a greater effort to ensure that all potential improvements can be achieved.

For example, EPA already has on its regulatory agenda plans to revise the rules governing compliance demonstrations under the Acid Rain Program, and CSAPR at 40 C.F.R. Part 75. UARG believes there are many opportunities to relieve regulatory burdens under those rules by, for example, updating fuel sampling and analysis requirements to reflect current market and operating conditions and incorporating relief already provided for individual sources by petition. EPA should engage in outreach to affected sources prior to issuing its proposal to maximize the improvements to the rule.

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[71] Petition of the NAAQS Implementation Coalition for Reconsideration of Portions of the Final Rule on Revisions to the Guideline on Air Quality Models (Mar. 20, 2017), EPA-HQ-OAR-2015-0310-0181.

B. The So-Called "Credible Evidence Rule"

In 1997, EPA promulgated revisions to 40 C.F.R. Parts 51, 52, 60, and 61 removing restrictions on the use of information other than the EPA or state-specified compliance method to establish violations of, or compliance with, emission limitations.[72] Later, EPA revised its model rules for Federal Permit Operating Programs under Title V at 40 C.F.R. Parts 70 and 71 to require identification and consideration of information other than the specified compliance method when certifying compliance with permit terms and conditions.[73] These rules, which have so far avoided judicial review,[74] impose significant regulatory burdens and uncertainty on sources regarding the standard for compliance and responsible officials' obligations when making certifications or compliance under penalty of perjury. They also are inconsistent with Congress' limited authorization to use such information when assessing civil penalties only to determine the duration of a violation that already has been established using the specified compliance method. EPA should engage in rulemaking to repeal or revise these rules to limit the methods for establishing violations and determining compliance to those specified in rules and permits, and to limit use of other information to establishing the duration of a violation or compliance, consistent with Congress' direction in CAA § 113(e).

* * * * * * * *

UARG appreciates this opportunity to provide input on EPA regulations that may be appropriate for repeal, replacement, or modification. We look forward to the future opportunities for engagement mentioned in the *Federal Register* notice. Please feel free to contact me with any questions.

Sincerely,

/s/ Andrea B. Field
Andrea Field
Counsel for the Utility Air Regulatory Group

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[72] 62 Fed. Reg. 8314 (Feb. 24, 1997).

[73] 62 Fed. Reg. 54,900, 54,946-47 (Oct. 22, 1997); 79 Fed. Reg. 43,661 (Jul. 28, 2014).

[74] Industry groups, including UARG, challenged both rules when they were promulgated, but the U.S. Court of Appeals for the D.C. Circuit refused to review their validity, finding instead that the challenges were not "ripe for review." *Clean Air Implementation Project v. EPA*, 150 F.3d 1200 (D.C. Cir. 1998); *NRDC v. EPA*, 194 F.3d 130 (D.C. Cir. 1999).

To: Schwab, Justin[Schwab.Justin@epa.gov]
From: ECOS
Sent: Fri 11/3/2017 6:08:41 PM
Importance: Normal
Subject: Parfitt Advances ECOS Priorities in DC, ECOS Weighs in on U.S. EPA Strategic Plan, & More
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ECOSWIRE

Friday, November 3, 2017

Vol. 19 No. 41

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ECOS President Advances State Priorities across Nation's Capital

This week, Todd Parfitt of Wyoming and ECOS staff participated in a series of meetings to share Parfitt's priorities as ECOS President and information on Cooperative Federalism 2.0 and ECOSResults.org. Parfitt met with the White House Office of Management and Budget on the outlook for state and tribal assistance grants and ECOS' budget priorities generally. Walking the halls of the U.S. Capitol, Parfitt met with Senate Environment & Public Works Committee Chair John Barrasso

(R-WY) and Rep. Liz Cheney (R-WY).

Other key meetings included discussions with EPA officials on the new Smart Sectors Program and permitting reform (see related story), and a gathering with the Executive Directors of the Association of Clean Water Administrators and Association of State Wetland Managers on advancing state assumption of the Section 404 program (see related ECOS Resolution). [Dunn/Swanson]

ECOS Expresses Support for Cooperative Federalism, E-Enterprise in U.S. EPA Strategic Plan Comments

ECOS on October 31 submitted comments on the U.S. EPA's draft FY 2018-2022 Strategic Plan. In the comment letter, ECOS offers support for the draft plan's emphasis on cooperative federalism and E-Enterprise for the Environment and suggests additional areas for agency focus, such as emergency response. The letter is accompanied by several pages of technical input on various aspects of the strategic plan.

The draft plan was released October 5 for public comment. Over the course of the 26-day public comment period, ECOS held discussions on the draft through an all-member call and correspondence and submissions from individual states.

Stay tuned for a final version of the strategic plan later this year. [McAleer]

Pruitt Announces Directive on Agency's Science Committees

On October 31, U.S. EPA Administrator Scott Pruitt issued a directive designed to ensure "independence and integrity" of agency Federal Advisory Committees (FACs). The new policy requires all FAC members to be independent from EPA and will prevent any individual who receives EPA funding from serving on one of the agency's FACs. This principle would not apply to state, tribal, or local government agency recipients of EPA grants.

The directive focuses on the following areas related to FACs: strengthening member independence; increasing state, tribal and local government participation; enhancing geographic diversity; and promoting fresh perspectives.

In addition, Pruitt announced key leadership appointments for three of the 23 committees: Michael Honeycutt of the Texas Commission on Environmental Quality will chair the Science Advisory Board; Tony Cox of Cox Associates will head the Clean Air Scientific Advisory Committee; and Paul Gilman of Covanta will serve as Chairman of the Board of Scientific Counselors. In the coming days, the full membership of these committees and boards will be announced and is expected to include state environmental agency science experts. [Swanson]

U.S. EPA Seeks Comments on Applying Federal Permitting Best Practices to State Infrastructure Permits

On October 31, EPA issued a *Federal Register* notice seeking comments on whether federal permitting best practices are generally applicable to infrastructure permits issued by delegated or authorized states as described in Title 41 of the Fixing America's Surface Transportation Act (FAST-41).

Federal "best practices" specifically refers to the January 18 document *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects* developed by the Federal Permitting Improvement Steering Council. The document includes the following best practice areas: enhancing early stakeholder engagement; ensuring timely decisions regarding environmental reviews (including exploring opportunities to expand use of general permits where appropriate); improving coordination between federal, state, and tribal agencies; increasing transparency; reducing administrative burdens by using online permit applications, eliminating unnecessary internal process steps, and conducting routine evaluations of permit processes; using geographic information systems (GIS) to expedite permitting; creating and providing training; and implementing other best practices such as use of conflict resolution and third-party neutral facilitators.

Comments are due **November 20**. States are asked to share feedback on the best practices with Beth Graves of ECOS. [Graves]

House Looks at Hurricane Response Takeaways in Two Hearings this Week

This week, the House Committee on Transportation and Infrastructure held a hearing to "explore key takeaways from this year's unprecedented hurricane season." One of the witnesses was new U.S. EPA Region 2 Administrator Pete Lopez.

Also this week, the House Committee on Energy and Commerce Subcommittee on Energy held a hearing entitled *The 2017 Hurricane Season: A Review of Emergency Response and Energy Infrastructure Recovery Efforts*. This hearing featured witnesses from the U.S. Department of Energy and U.S. Army Corps of Engineers. [Dunn]

State News You Can Use

Louisiana, U.S. EPA, and DOJ Reach Air Pollution Settlement with ExxonMobil

Colorado, U.S. EPA, and Justice Department Reach Air Pact with PDC Energy

Missouri Accepting Comments on Reducing Red Tape

Wyoming Works with U.S. EPA to Protect Streams

Virginia Reports Cleanest Air in Past 20 Years

Arkansas Staff Get 'Groovy' at Arkansas Environmental Federation Convention

Maine Announces Governor's Awards for Environmental Excellence

ECOS Resource of the Week

ITRC's Guidance on Complex Sites

Does your state agency use resources from the Interstate Technology and Regulatory Council (ITRC)? One such resource is its latest guidance document, *Remediation Management of Complex Sites*, released this week.

This guidance presents a recommended process for remediation management at complex sites, incorporating and referring to best management practices, tools, and technologies described in previous publications by U.S. EPA, the U.S. Department of Defense, ITRC, and others. The guidance also includes numerous case studies that describe real-world applications of remediation and remediation management at complex sites.

Click here to view the document. ITRC will hold its first Complex Sites online training class on **February 6, 2018 at 1-3:15 p.m. Eastern**.

ITRC is a state-led coalition of state and federal regulators, industry, and stakeholders working together to achieve regulatory acceptance of environmental technologies. Its website can be accessed at the bottom of ECOS' homepage, or here. [Bodi/Longsworth]

Need-to-Know News in Air, Water, & Environmental Justice

U.S. EPA Sets Public Hearing on CPP Repeal

Area of Focus: *Air*

U.S. EPA has announced that it will hold a public hearing on the proposed repeal of the *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units* (commonly known as the Clean Power Plan, or CPP) in Charleston, West Virginia on **November 28-29**. Registration will be open once the public meeting notice is published in the *Federal Register*, and all individuals wishing to speak are encouraged to register in advance.

"EPA is headed to the heart of coal country to hear from those most impacted by the CPP and get their comments on the proposed Repeal Rule," said EPA Administrator Scott Pruitt.

For additional details, see the EPA press release and EPA website for background information on the CPP. [Poole]

U.S. EPA Issues Pair of Actions on Cross-State Air Pollution

Area of Focus: *Air*

U.S. EPA on October 30 announced two actions that address cross-state air pollution for the 2008 ozone standards.

One action denies a petition filed by nine northeastern states under Section 176A of the Clean Air Act asking the agency to add eight states plus portions of Virginia to the Ozone Transport Region. EPA has determined that approaches such as those under the Clean Air Act's (CAA's) good neighbor provision will be more effective in addressing remaining ozone transport obligations for the 2008 standards. More information is available here.

In the second action, EPA issued a memo to provide supplemental information to states and the Regions. This information supports the development or review of State Implementation Plans that address the CAA's "good neighbor" provision, as it pertains to the 2008 ozone National Ambient Air Quality Standards. While this information can inform the development of these plans, the information is not a final determination regarding states' remaining obligations under the good neighbor provision, and any such determination would be made through notice-and-comment rulemaking. More information is available here. [Parisien]

U.S. EPA Signs NODA for Proposed Stays of Oil and Gas Air Rules

Area of Focus: *Air*

On November 1, U.S. EPA signed two Notices of Data Availability (NODAs) related to the agency's proposed stays of air requirements in the 2016 New Source Performance Standards for the oil and natural gas industry. EPA on June 16 had proposed a two-year stay and a three-month stay of the rule's fugitive emissions requirements, well site pneumatic pump standards, and requirements that closed vent systems be certified by a professional engineer while the agency reconsiders issues associated with these requirements.

Since proposing the stays, the agency has heard a wide range of concerns and suggestions from stakeholders both about the 2016 rule and the proposed stays. The NODAs provide information on some of these issues and seek comments to assist in developing a final rule. The information provided in the NODAs falls into two categories: challenges to implementing the requirements in the 2016 rule that would be covered by proposed stays; and the agency's legal authority to issue a stay. EPA also is providing an updated analysis of cost savings, forgone benefits, and net benefits of the proposed two-year stay.

EPA will take public comment on the NODAs for 30 days following publication in the *Federal Register*. For more information, click here. [Parisien]

U.S. EPA Recognizes 28 CWSRF Program Successes

Area of Focus: *Water*

U.S. EPA on October 31 recognized 28 clean water infrastructure projects for excellence and innovation within the Clean Water State Revolving Fund (CWSRF) program at the 2017 National SRF Workshop hosted in Indianapolis, Indiana by the Council of Infrastructure Financing Authorities. Honored projects range from large wastewater infrastructure projects to small decentralized and agriculture projects.

EPA's Performance and Innovation in the SRF Creating Environmental Success (PISCES) program celebrates innovation

demonstrated by CWSRF programs and assistance recipients. The CWSRF is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide range of water quality infrastructure projects. Over the past 30 years, CWSRF programs have provided more than $125 billion in financing for water quality infrastructure.

"For decades the Clean Water State Revolving Fund has supported critical water infrastructure projects that help grow the American economy and support our way of life," said Mike Shapiro, Acting Assistant Administrator for EPA's Office of Water. "These projects are a testament to the power of the Clean Water State Revolving Fund in leveraging investment to meet the country's diverse clean water needs."

More about the projects and the PISCES program can be found here. Information about an ECOS project to identify and share innovative CWSRF work can be found here. [Parisien/Piper]

U.S. EPA Announces Selections for 2017 Environmental Justice Small Grants

Area of Focus: Environmental Justice

U.S. EPA has announced the award of nearly $1.2 million in competitive grants to 36 community and tribal organizations working to address environmental justice issues in their communities. The grants enable these organizations to conduct research, provide education, and develop community-driven solutions to local health and environmental issues in minority, low-income, and tribal communities.

In an effort to increase outreach to affected communities in states and territories, the 2017 Environmental Justice Small Grants (EJSG) Program placed special emphasis on proposals from under-represented states that have been awarded three or fewer EJSGs over the last five years. Of the 36 total projects selected, 23 are from underrepresented states (64%). The agency will make final awards upon successful completion of the award application process. [Poole]

E-Enterprise for the Environment

E-Enterprise

McDonnell Appointed to E-Enterprise Leadership Council

This week, ECOS President Todd Parfitt of Wyoming appointed Pennsylvania Department of Environmental Protection Secretary Patrick McDonnell to serve on the E-Enterprise Leadership Council (EELC). McDonnell fills the state EELC vacancy created when John Stine of Minnesota ended his term as ECOS President.

ECOS thanks Stine for his EELC service and welcomes McDonnell to the leadership body. [Graves]

Member News

Tormey of Iowa Elected to ACOEL Fellowship

Congratulations to Ed Tormey, General Counsel of the Iowa Department of Natural Resources, on his election last week as a Fellow of the American College of Environmental Lawyers (ACOEL). Tormey has practiced environmental law in both the private and public sectors for 27 years and also has served as Legal Services Bureau Chief at the Ohio Environmental Protection Agency.

As reported in last week's *ECOSWIRE*, former ECOS member and President Tom Burack also was one of 20 individuals from across the nation elected last week to the College Fellowship at ACOEL's 10th anniversary meeting in Charleston, South Carolina. [Parisien]

Career Opportunities

ECOS Seeks Project Manager

ECOS is accepting applications for a Project Manager to support the work of E-Enterprise for the Environment (EE) and the National Environmental Information Exchange Network (EN). The Project Manager works with senior staff at state environmental agencies, U.S. EPA, and tribes to support the operation of the EN, and to facilitate its deeply connected and formative role in EE.

To apply for this position, send a resume and cover letter here by November 30 with subject "Application for Project Manager."

See more information here. [Longsworth]

Upcoming Events

Meetings

Butler of Ohio to Participate in Disaster and Public Safety Brown Bag on the Hill

The Sea Grant Association invites interested attendees to a lunchtime briefing, *Using Science and Outreach to Assist State and Local Decision Makers in Disaster Preparedness and Public Safety*. ECOS member Craig Butler of Ohio will participate in the lunchtime discussion, which is sponsored by Congressmen Lee Zeldin of New York and Joe Courtney of Connecticut.

The event will be held **November 8 at 12-1:30 p.m.** in the Rayburn House Office Building. RSVP by November 3 to Joel Widder. [Piper]

ECOS Calls

November, December All-Member Calls

ECOS will hold its remaining two All-Member Monthly Calls in 2017 on:

- **November 16, 4-5 p.m. Eastern** on science and research
- **December 14, 3-4 p.m. Eastern** on data and analytics

Please mark your calendars now. An agenda with dial-in information will be emailed to all ECOS members prior to the call. [Swanson]

Superfund Workgroup

The ECOS Superfund Workgroup will hold its next call on **November 27 at 2:30-3:30 p.m. Eastern** to continue state-U.S. EPA discussion of implementing the recommendations of the EPA Superfund Task Force. The workgroup is chaired by ECOS Waste Committee Chair Scott Thompson, Director of the Oklahoma Department of Environmental Quality, and has the regular participation of EPA Task Force Chair Kell Kelly, Senior Advisor to the Administrator, and other EPA leaders.

The call will include a report-out on Superfund discussions at the recent ASTSWMO Annual Meeting by ASTSWMO CERCLA/Brownfields Subcommittee Chair Amy Brittain of Oklahoma and former ASTSWMO Past President Bonnie Buthker of Ohio. Call participants will provide input on the solutions proposed.

For more information, please contact Lia Parisien of ECOS. [Parisien]

Shale Gas Caucus

The ECOS Shale Gas Caucus (SGC) will kick off its Phase 3 cross-media webinar series on **December 6 at 2-3 p.m. Eastern** with a discussion of preventing produced water spills and leaks. Moderated by SGC Co-Chairs Dave Glatt of North Dakota and Martha Rudolph of Colorado, the call will feature Scott Anderson and Dan Mueller of the Environmental Defense Fund and Roy Hartstein of Southwestern Energy. Jim Kenney of U.S. EPA's Office of Enforcement and Compliance Assurance will follow with an announcement of an SGC success story in the area of produced water.

For more information, please contact Lia Parisien of ECOS. [Parisien]

Webinars

California on Safer Consumer Products

California's Department of Toxic Substances Control (DTSC) will hold a Safer Consumer Products program public workshop on lead-acid batteries and alternatives on **November 6** in Sacramento, California. The event will be broadcast via webinar and will cover the various uses of lead-acid batteries, the regulatory landscape they face, lithium-iron-phosphate batteries as a potential alternative in vehicles, automobile manufacturer perspectives, and issues such as recycling.

This information is being gathered as part of DTSC's work to evaluate whether lead-acid batteries should be listed as a Priority Product under California's Safer Consumer Products regulations. Public comments and questions are welcome.

Register for the in-person or webinar and download the agenda and event announcement. [Longsworth]

U.S. EPA and the Army Corps on WOTUS by Sector

U.S. EPA and the U.S. Army Corps of Engineers have announced ten teleconferences to hear from stakeholders their recommendations for revising the definition of "Waters of the United States" under the Clean Water Act. The first nine teleconferences will be tailored to specific industries, as follows, and the tenth will be open to the public at large.

The teleconferences will run throughout the fall on **Tuesdays at 1-3 p.m. Eastern** as follows:

- **November 7** scientific organizations and academia;
- **November 14** stormwater, wastewater management and drinking water agencies; and
- **November 21** general public. [Piper]

ECOS and U.S. EPA on Compliance Research Part 5

Part 5 of the Compliance Research Webinar Series entitled *Innovative Approaches to Foster Compliance – the Role of Deterrence* will be held on **November 9 at 1-2:30 p.m. Eastern**.

Dr. Sarah Stafford, a Professor at the College of William and Mary working in Economics, Public Policy, and Law, will present the basic theories of compliance and deterrence and the findings of social science research on what techniques are most effective. She also will present some innovative approaches being used in programs across the U.S. to encourage facilities to increase voluntary compliance and to decrease inadvertent violations.

The Compliance Research Webinar Series, hosted by the National Enforcement Training Institute of the U.S. EPA Office of Enforcement and Compliance Assurance and designed for ECOS and U.S. EPA, helps program administrators understand how collaboration with academics can identify effective and measureable approaches to compliance.

For more information, please contact Sonia Altieri of ECOS. [Altieri]

ITRC on Long-term Contaminant Management Using Institutional Controls

On **November 14 at 1-3:15 p.m. Eastern**, the Interstate Technology and Regulatory Council (ITRC) will host a free online training on institutional controls (ICs), which are administrative or legal restrictions that provide protection from exposure to contaminants on a site.

After attending the training, participants will be able to describe best practices and evolving trends for IC management at individual sites and across state agency programs; improve IC reliability and prevent IC failures; improve existing, or develop new, IC management programs; identify the pros and cons about differing IC management approaches; and more.

Learn more and register here. [Bodi]

U.S. EPA on Drinking Water Issues

U.S. EPA's Office of Research and Development and the Office of Water host a monthly webinar series on small drinking water systems. Their schedule for the rest of the year is:

- **November 15** - National Stormwater Calculator for Managing Runoff
- **November 28** - Lead in Schools and Selecting Lead Free Fixtures
- **December 12** - Residual Chlorine and Calibration Check for Chlorine Instruments

More information on the small systems webinars, including recordings of past webinars and how to register, is available here. [Hanson]

U.S. EPA ORD on Cyanobacteria Monitoring

U.S. EPA's Office of Research and Development will hold its next monthly Tools and Resources webinar on **November 15 at 3-4 p.m. Eastern**.

The webinar will focus on monitoring cyanobacteria with satellites, highlighting how federal agencies (EPA, NASA, NOAA and USGS) are collaborating to use real-world satellite applications that support environmental management of U.S. lakes by quantifying cyanobacterial harmful algal blooms and related water quality parameters. This webinar will also address provisional satellite derived cyanobacteria data and three software tools available to state environmental and health agencies for review and testing as part of the Cyanobacteria Assessment Network (CyAN).

Register here. [Longsworth]

ITRC on PVI: Fundamentals of Screening, Investigation, and Management

On **November 16 at 1-3:15 p.m. Eastern**, the Interstate Technology and Regulatory Council (ITRC) will host a free online training on petroleum vapor intrusion (PVI), the process by which volatile petroleum hydrocarbons released as vapors from light nonaqueous phase liquids, petroleum-contaminated soils, or petroleum-contaminated groundwater migrate through the vadose zone and into overlying buildings.

After attending this training, participants should be able to determine when and how to use the ITRC PVI document at their sites; describe the important role of biodegradation impacts on the PVI pathway (in contrast to chlorinated solvent contaminated sites); value a PVI conceptual site model and list its key components; and more.

Learn more and register here. [Bodi]

NIH on Wildfire Risk Communication and Health Effects

On **November 17 at 1-2 p.m. Eastern**, the National Institutes of Health will host a webinar on the impacts of wildfires on the health of vulnerable individuals and on communities exposed periodically to such events.

The presentations will cover how environmental exposures associated with wildfires affect human health, as well as approaches being used to develop targeted risk communication about wildfires for a variety of audiences.

Register here.

To: Schwab, Justin[Schwab.Justin@epa.gov]
Cc: James D. Elliott (jelliott@spilmanlaw.com)[jelliott@spilmanlaw.com]; Kern, Gretchen (Gretchen.Kern@pxd.com)[Gretchen.Kern@pxd.com]; Schaaff, Lesley[lschaaff@hess.com]; Susan Ginsberg[sginsberg@ipaa.org]; Samantha McDonald[SMcDonald@ipaa.org]
From: Lee Fuller
Sent: Tue 10/3/2017 9:04:30 PM
Subject: IPAA Meeting Follow Up
IPAA Comments -- Evaluating Existing Regulations -- Docket ID EPA-HQ-OA-2017-019 05-15-2017.pdf
IPAA-AXPC Comments on 9-18-2015 Oil and Gas Proposals.pdf
IPAA-AXPC-Coalition Petition for Reconsideration of Subpart OOOOa.pdf
Manipulating Data to Create the Illusion That Low Producing Wells Are Super-Emitters.pdf
Texas Environmental Law Meeting -- Environmental Issues in the Oil Patch -- 08-2017.pdf

Justin,

We appreciated meeting with you and Mandy yesterday regarding air emissions management of oil and natural gas production operations. I have attached several documents that expand on the nature of the issues that we discussed. There will be some repetition because the issues have been addressed several times.

They include:

1. IPAA comments to EPA on Evaluating Existing Regulations
2. IPAA-AXPC Comments on the Subpart OOOOa, CTG and Source Determination proposals in 2015
3. IPAA-AXPC-Coalition Petition for Reconsideration of Subpart OOOOa – includes the low production well issue among others
4. An assessment of the data manipulation in the study that EPA used to eliminate the low production well exclusion from Subpart OOOOa
5. A publication that I prepared for a meeting on environmental issues in the oil patch that uses the development of the air emissions regulations as its focus beginning with Subpart OOOO.

Thanks again for the opportunity to meet on these issues.

Lee Fuller

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

Evaluation of Existing Regulations

Docket ID: EPA-HQ-OA-2017-0190

May 15, 2017

These comments are filed on behalf of the Independent Petroleum Association of America (IPAA), the American Association of Professional Landmen (AAPL), the American Exploration and Production Council (AXPC), the Association of Energy Service Companies (AESC), the Domestic Energy Producers Alliance (DEPA), the International Association of Drilling Contractors (IADC), the International Association of Geophysical Contractors (IAGC), the National Stripper Well Association (NSWA), the Petroleum Equipment & Services Association (PESA), and the following organizations:

Arkansas Independent Producers and Royalty Owners Association
California Independent Petroleum Association
Coalbed Methane Association of Alabama
Colorado Oil & Gas Association
East Texas Producers & Royalty Owners Association
Eastern Kansas Oil & Gas Association
Florida Independent Petroleum Association
Idaho Petroleum Council
Illinois Oil & Gas Association
Independent Oil & Gas Association of New York
Independent Oil & Gas Association of West Virginia
Independent Oil Producers' Agency
Independent Oil Producers Association Tri-State
Independent Petroleum Association of New Mexico
Indiana Oil & Gas Association
Kansas Independent Oil & Gas Association
Kentucky Oil & Gas Association
Louisiana Oil & Gas Association
Michigan Oil & Gas Association
Mississippi Independent Producers & Royalty Association
Montana Petroleum Association
National Association of Royalty Owners
Nebraska Independent Oil & Gas Association
New Mexico Oil & Gas Association
New York State Oil Producers Association
North Dakota Petroleum Council
Northern Montana Oil and Gas Association
Ohio Oil & Gas Association
Oklahoma Independent Petroleum Association

Panhandle Producers & Royalty Owners Association
Pennsylvania Independent Oil & Gas Association
Permian Basin Petroleum Association
Petroleum Association of Wyoming
Southeastern Ohio Oil & Gas Association
Tennessee Oil & Gas Association
Texas Alliance of Energy Producers
Texas Oil and Gas Association
Texas Independent Producers and Royalty Owners Association
Utah Petroleum Association
Virginia Oil and Gas Association
West Slope Colorado Oil & Gas Association
West Virginia Oil and Natural Gas Association

Collectively, these groups represent the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that are significantly affected by Environmental Protection Agency (EPA) regulatory actions. Independent producers drill about 90 percent of American oil and gas wells, produce 54 percent of American oil and produce 85 percent of American natural gas.

In addition to the specific comments made herein, we support those comments submitted separately by the participants in these comments.

American oil and natural gas producers recognize and support the importance of managing the environment. Overwhelmingly, they live in the communities where they produce. At the same time, oil and natural gas extraction is a primary industry. It involves breaking through layers of hard rock to reach oil and natural gas producing zones. It has over the past decades become more sophisticated through the use of highly technical skills. In particular, the development of horizontal drilling in combination with hydraulic fracturing has opened access to unconventional shale formations and changed the framework of American energy supply. But, it is also an industry with hundreds of thousands of legacy conventional wells. It operates in all types of geographical areas – arid to swamp to offshore, freezing to sweltering, rural to urban. Each of these can create different environmental management challenges.

Independent producers believe that air emissions can be managed, including methane, through cost effective Volatile Organic Compound technologies, that produced water can be used, reused, treated and discharged safely, that drilling fluids will continue to be well controlled. At the heart of these actions are state regulators who understand the differing circumstances under their control and regulate accordingly. Correspondingly, EPA needs to play a distant role that recognizes the expertise and commitment of the state regulators who – like producers – live in these producing areas.

To put these comments in context, it is important to understand the nature of the American oil and natural gas industry. Oil and natural gas wells naturally deplete over time. That is, following high volumes of initial production, volumes begin to decline. Ultimately, the rate of decline slows – typically when the well production reaches marginal well amounts. Correspondingly, the industry is a "food chain" industry. As large companies want more capital,

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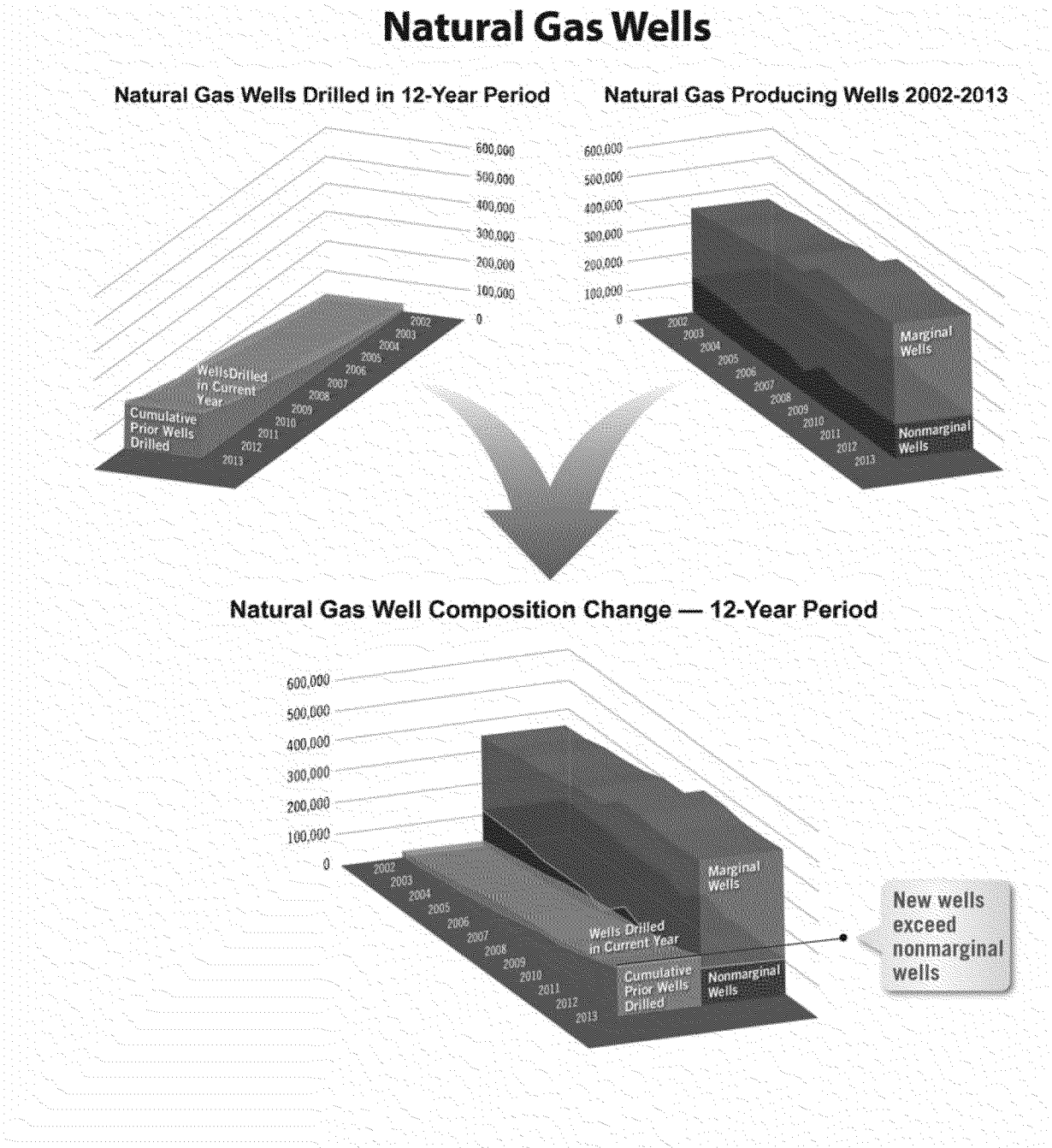
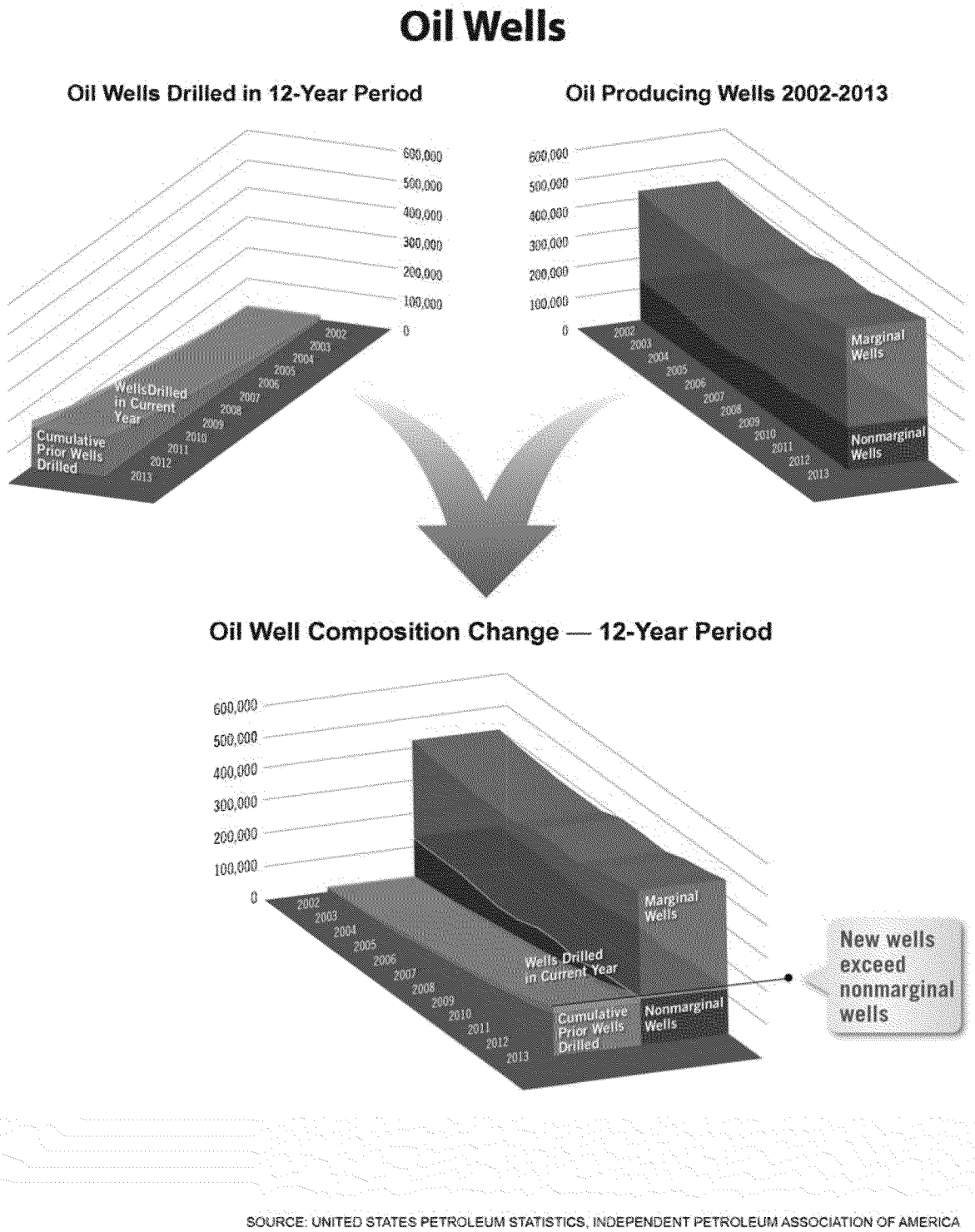
they sell their lower producing properties to smaller companies. This explains in large measure why small businesses are the primary owners of marginal wells. The following graphic shows how depletion affects the mix of natural gas well operations:



SOURCE: UNITED STATES PETROLEUM STATISTICS, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

The same dynamics occur for oil wells:



SOURCE: UNITED STATES PETROLEUM STATISTICS, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

These comments will address several EPA regulatory actions that can adversely affect independent oil and natural gas producers.

Additionally, these comments will address issues raised in oral comments to the Small Business stakeholder public meeting on April 25, 2017. IPAA is a federally focused trade association. Its membership spans the scope of America's independent oil and natural gas producers. The median size of an IPAA member firm is 12 full time employees. Consequently, IPAA has a strong small business component. The other participants in these comments have similar small business components. These small businesses are the primary operators of America's marginal wells. A marginal oil well produces 15 barrels per day or less; a marginal natural gas well produces 90 mcfd or less. However, the average marginal oil well produces about 2.7 barrels per day and the average marginal natural gas well produces about 22 mcfd. Approximately 80 percent of US oil wells are marginal wells. About two-thirds of American natural gas wells are marginal wells. However, collectively they are a significant component of American production generating between 10 and 20 percent of US oil production and between 12 and 13 percent of US natural gas production.

This juxtaposition of small businesses operating marginal wells creates the consequence that EPA regulations that do not recognize their impact on marginal wells result in excessive impacts on these small businesses.

Regulatory Framework Objectives

Independent producers seek a predictable, cost effective regulatory system.

United States environmental regulations are a mix of federal and state regulations. The primary federal environmental laws – the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the Resource Conservation and Recovery Act – hinge on balanced federal and state roles. The federal government's role is principally creating national standards, authorizing state management of federal law, stewarding state regulatory actions, addressing interstate and international issues and funding for research and state support. Correspondingly, states develop and manage direct regulatory programs designed to meet national standards and reflect their differing local circumstances. In evaluating its existing regulatory actions, EPA needs to revisit these balances and assure that the states and regulated community are protected against aggressive political efforts to federalize regulations – particularly, from IPAA's perspective, with regard to oil and natural gas production.

More specifically, EPA needs to include a significant state delegation initiative. Most of the actions related to state delegation occurred within the first few years following legislative enactment. Now, decades after the last revisions to these major laws, the state delegation process needs to be rejuvenated; states need encouragement, facilitation and funding. Failure to effectively delegate authority opens opportunities for federal incursion into regulatory activities that are intended to be under state management. And, it places the regulated community in a position where double regulation – state and federal – unnecessarily compounds their daily operations.

For oil and natural gas production, federal regulations should be targeted. For example, federal air emissions regulations should be Volatile Organic Compound (VOC) based. EPA needs to recognize the variability of oil and natural gas production operations and ownership. It needs to

define low production wells and assure that any federal regulation is specifically analyzed for them; these low production wells should be excluded from regulation where that is feasible.

EPA needs to assure that federal technology determinations are based on analyses that are designed for assessing regulations and are scientifically sound. Recent federal regulatory actions have utilize analyses that were never developed for regulatory design purposes. Consequently, EPA extrapolated information to justify its regulatory actions beyond the validity of the underlying data – an issue that is particularly problematic with regard to low production wells. In developing new regulations, EPA needs to devise procedures to use federal resources for analyses – designing programs and assuring data quality and focus for regulation.

EPA needs to thoroughly review and revise its federal enforcement process. It needs to create an enforcement program that treats the regulated community with fairness, respect and dignity. It needs to eliminate the use of excessive threatening tactics, egregious fine proposals and enforcement to compel regulation where EPA has no authority.

AIR REGULATIONS

Oil and Natural Gas Production Regulations

Over the past several years, EPA has created several Clean Air Act (CAA) regulatory actions regarding oil and natural gas production operations. These include: New Source Performance Standards (NSPS) Subpart OOOO and Subpart OOOOa and Control Techniques Guidelines (CTG).

In 2012, EPA promulgated NSPS Subpart OOOO creating VOC regulations on several oil and natural gas production emissions sources – reduced emissions completion (REC) of fractured natural gas wells, pneumatic controllers and storage vessels. In 2016, EPA promulgated NSPS Subpart OOOOa creating methane regulations on additional oil and natural gas production emissions sources – REC for fractured oil wells, pneumatic pumps and fugitive emissions – and converting Subpart OOOO to a methane regulation. In 2016, EPA finalized a CTG for existing sources of oil and natural gas production facilities in Ozone National Ambient Air Quality Standards (NAAQS) nonattainment areas. In 2016, EPA announced its intent to initiate a methane based nationwide existing source regulatory program and started an Information Collection Request (ICR) to collect information for that purpose.

In 2017, EPA terminated the ICR. The Trump Administration announced its intent to revisit the Subparts OOOO and OOOOa regulations and suspended the Subpart OOOOa fugitive emissions requirements pending action on a petition for reconsideration.

This mix of regulations resulted first in the case of Subpart OOOO from a consent decree and subsequently from the Obama Administration Climate Action Plan. Taken together, they present – in their current form – excessive regulatory burdens without attendant environmental benefits. The reasons differ but are primarily related to the shift in the regulatory framework to a methane basis as a pathway to federalizing oil and natural gas production regulation. Importantly, for oil and natural gas production, controlling VOC also controls methane because they are emitted together and, therefore, reduced together.

When the VOC Subpart OOOO regulations were finalized, they were largely based on technology that had been utilized as in EPA's voluntary Gas STAR program. This voluntary

program was highly effective in reducing emissions long before the regulations were created because many of the new large fractured natural gas wells were using these technologies. Nevertheless, as EPA moved from a voluntary program to regulations, it created adverse consequences because in defining terms it captured operations that were not appropriate for the technology and it created opportunities for abusive enforcement actions.

These issues were dramatically expanded when Subpart OOOOa was finalized. First, shifting the regulation target to methane did not improve emissions reductions from new sources, but it did open a little used CAA pathway – Section 111(d) – to create nationwide existing source regulations. The approach would principally target older wells since more recent ones either used Gas STAR voluntary technologies or are permitted under Subpart OOOO. Most of these older wells will be low production wells.

Second, the fugitive emissions component of Subpart OOOOa goes well beyond widely accepted technology. NSPS regulations should be based on the best system of emissions reductions (BSER) "…which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." The evolution of fugitive emissions regulations for oil and natural gas production is recent. Emissions analyses in the past several years identified that production emissions are characterized by a few pieces of equipment with large emissions ("fat tails") rather than a broad array of sources. States have been developing fugitive emissions programs in recent years. None of these use the approach in the Subpart OOOOa regulations. Consequently, it is illogical to suggest that the Subpart OOOOa requirements conform to the BSER standard.

Third, a particular problem with the fugitive emissions regulations relates to their cost effectiveness – a BSER issue – over the life of the facility. While other components of Subparts OOOO and OOOOa are capital mandates – specific equipment being required – the fugitive emissions provisions are enduring operating costs that apply for the life of the well. Consequently, as well production declines, the cost effectiveness of the fugitive emission program changes and becomes more and more burdensome. The initial Subpart OOOOa proposal would have excluded low production wells from the requirements, but this exclusion was eliminated in the final regulation based on a specious analysis from Keep It in the Ground environmental activists.

The CAA provides for the development of CTG for existing sources of criteria pollutants in nonattainment areas. One of the most common uses relates to Ozone NAAQS nonattainment areas where the targeted criteria pollutants are VOC and/or nitrogen oxides. While EPA was in the process of proposing Subpart OOOOa and initiating its drive for a nationwide methane existing source regulations, it also proposed VOC CTG for existing oil and natural gas production operations in ozone nonattainment areas.

VOC CTG apply in Moderate, Serious, Severe and Extreme ozone nonattainment areas. State Implementation Plans (SIPs) must include regulations that have been published as CTG as a part of their Reasonably Available Control Measures (RACM) or they have to develop alternative regulations to obtain the predicted VOC reductions from the CTG. While the CAA provides for minimum source sizes that must be regulated in these Ozone nonattainment areas – ranging from

100 tons/year to 10 tons/year depending on the classification – these source size limits do not apply when a CTG regulates smaller facilities.

Moreover, the oil and natural gas production CTG is essentially a regulatory mix that applies the NSPS technologies to existing sources. However, those BSER requirements are based on their application to new or modified facilities. The technology standard for CTG – which are required for existing facilities – is Reasonably Available Control Technology (RACT). BSER and RACT are not the same; RACT must consider the cost effectiveness of its technologies in retrofitting existing sources. The CTG as finalized essentially require replacing existing equipment. EPA's development of the CTG should have been primarily analyzing its impact on low production operations. As earlier graphics showed, after about a decade, wells drilled during that decade will be all of the non-low production wells. This means that they will be comprised of the NSPS technology requirements – in this case, pneumatic controllers and storage vessel controls. Consequently, the predominant cost burden of the CTG will be borne by the legacy wells that are the small producers. Yet, EPA made no effort to assess RACT between these clearly different components of the array of producers and to assess the cost effectiveness of that assessment.

Both the BSER determination in Subparts OOOO and OOOOa and the RACT decisions in the CTG development raise significant questions about the nature of EPA's technology evaluations. The CAA tasks EPA with the responsibility to make critical, long lasting decisions regarding technologies that have extensive national implications. BSER becomes the national standard for new sources – requirements that must be met on every new and modified source. RACT becomes a mandate that states must implement in nonattainment areas or obtain comparable reductions from other sources – a politically unlikely result.

If the experience in these regulations is a fair indicator, EPA faces an enormous challenge to assure that it properly acquires and assesses technology. While EPA lists many studies in its justification of both the Subpart OOOO and OOOOa regulations and the CTG, these studies fall well short of the materials that are needed for regulatory development. Realistically, the better studies were broadly designed to merely understand the nature of oil and natural gas production emissions. They have been useful in establishing that the emissions patterns for these operations are characterized by a few "fat tails" – failed or poorly maintained equipment – rather than broad systemic losses. But, they were never crafted to be used for regulatory development. Nevertheless, EPA has used them for that purpose. In Subpart OOOO, the failure of this approach was largely suppressed because the NSPS technologies were ones that were in use in the EPA Gas STAR voluntary program. But, their use in Subpart OOOOa for the fugitive emissions component is illustrative.

The regulation of fugitive emissions primarily relies on an excessively costly optical gas imaging (OGI) leak detection and repair (LDAR) program. The LDAR requirements were wholly inappropriate. NSPS is intended to use a nationally applicable, adequately demonstrated BSER. Multiple states have been creating fugitive emissions programs. All are different; none use the approach in Subpart OOOOa. EPA's drive to embrace its program based on the paltry analytical information it had falls well short of a BSER determination.

Compounding the lack of sound, federally sanctioned studies, EPA also chose to rely on wholly flawed, advocacy studies in its actions. When EPA proposed its LDAR program, it created an exclusion for low producing – marginal – wells. Importantly, producers do not intentionally drill

marginal wells, but all wells eventually decline and become marginal. By creating the low producing well exclusion, small businesses would not have been subjected the demanding costs of LDAR. However, in the final rule, EPA removed the low producing well exclusion. Sadly, this is the precise intent of the Keep It in the Ground environmental movement that dominated the EPA decision to remove the low producing well exclusion. This decision was principally based on a specious study that creates the impression that low producing wells are large emitters. Its flaws are described in Appendix 1.

More broadly, it calls into question whether EPA can fulfill its statutory CAA responsibilities relying on studies that it neither designs nor funds. Clearly, in this instance, the failure to have a well-designed framework of information failed to produce well designed regulations. Given the clear political pressure that was driving the Subpart OOOOa and CTG requirements, EPA failed to stand up to the pressure and insist on sound and robust regulatory studies to meet its responsibilities.

A counterpoint to these concerns occurred on April 26, 2017, when an EPA study was published. The study addressed emissions from pneumatic controllers in oil and natural gas operations. Its significance remains to be seen, but it presents some of the issues described above in an interesting context. At its heart, the study – conducted by EPA experts – concludes that EPA has been overestimating emissions from pneumatic controllers. In fact, EPA researchers found methane emissions from intermittent bleed devices were 97 percent lower than the standard emission factor for intermittent pneumatic control devices EPA uses for estimates in its Greenhouse Gas Inventory (GHGI). This is relevant on a national scale considering EPA's latest GHGI reported 45 percent of oil and gas system methane emissions in 2015 were attributable to pneumatic controllers. The researchers acknowledge the significance of this finding by noting pneumatic devices are the "most significant sources of CH4 in ONG[1] production field operations."

This issue of pneumatic controller emissions has been part of a larger debate regarding EPA's regulations under the Climate Action Plan. When the Obama Administration initiated its Climate Action Plan regulatory efforts, it argued that new regulations – in this instance Subpart OOOOa and CTG – were needed to meet a 45 percent emissions reduction target for methane from 2012 to 2025. Industry countered that the Subpart OOOO regulations met this target for oil and natural gas production. It was a statement largely borne out by the GHGI reports.

Subsequently, EPA adjusted the GHGI by increasing emissions primarily related to pneumatic controllers. Key to EPA's rationale was a conclusion that reported data were showing higher emissions – based on EPA emissions factors. And, since only about thirty percent of oil and natural gas operators directly reported, EPA needed to scale up the other emissions in the inventory. Industry objected to this arbitrary scale up because, when EPA set the limits to determine direct reporters, it argued that it would get about 85 percent of emissions from 30 percent of the operators. This was largely valid because roughly 70 percent of the operators would be low producing wells. But, in its scale up, EPA increased the pneumatic controller calculated emissions on the basis of number of operators – or effectively added an amount equal to twice the reported amount.

[1] ONG – oil and natural gas

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The new study should change all of these calculations. And, in doing so, it should demonstrate that the necessity for Subpart OOOOa and the CTG are substantially overstated. Significantly, unlike the unfortunate history of using available but not directly related analyses for the recent EPA regulations, this new report was designed and conducted by EPA.

Small Business Implications

Because Subparts OOOO and OOOOa are NSPS, they are perceived as regulations that would have limited small business implications. They are largely thought to be capital requirements that are applied to new natural gas and oil wells. But, their application is different.

Subpart OOOO

Subpart OOOO was characterized as a regulation directed at managing hydraulically fractured natural gas wells. This was only true in part – its application to REC. However, even then, the scope of its definitions was broader. While the concept of REC – or green completions – and the framework of the regulations were based on water based hydraulically fractured wells with long horizontal legs developing shale formations, the regulation language captured other types of wells.

One key example is nitrogen fractured vertical wells. Instead of using water as the fracturing media, these wells use nitrogen. However, the REC process is predicated on getting produced gas into pipelines quickly to prevent emissions. This concept works well for water fractured wells because gas-water separation is straightforward. It does not work for nitrogen fracturing because a gas-nitrogen stream cannot be readily separated. This issue has a specific small business consequence. Nitrogen fracturing is not used for large gas wells with horizontal legs. It is used for small vertical wells in limited formations; these wells are developed by small business operators. EPA should have used greater efforts to assure that its scope was appropriate for the technology it required. Clearly, in this instance, it missed. Equally clearly, in the five years since the Subpart OOOO regulations were finalized, EPA has been unwilling to straightforwardly address its failure. Rather, it has tried to maneuver around the edges using the concept of changing the definition of low pressure wells. It is a strained and ineffective path. EPA needs to simply remove nitrogen fractured wells from the scope of Subpart OOOO.

Another aspect of the Subpart OOOO REC requirements that affects small business relates to EPA's failure to distinguish between unconventional and conventional formations in the scope of Subpart OOOO (and Subpart OOOOa when it expanded the REC requirements to oil well completions). The tight formations characterized by the success of America's development of shale gas and shale oil formations are characteristically unconventional formations. However, hydraulic fracturing is also used in the development of conventional formations. While EPA's Subpart OOOO definition would appear to reflect this distinction, when a small business operator developing conventional oil formations in the Illinois Basin sought clarification that its operations were not subject to Subpart OOOOa, it was rebuffed.

Subpart OOOOa

Subpart OOOOa expanded oil and natural gas production regulations in significant and adverse aspects for small business operators.

A primary aspect of Subpart OOOOa was the decision to change the targeted emissions from VOC to methane. Not only did Subpart OOOOa target methane, it revised the scope of Subpart OOOO. These changes did nothing to improve oil and natural gas production emissions management since VOC and methane are emitted simultaneously and the regulations capture both. It was a political decision because it would open a pathway to regulate existing sources on a national basis. This change is a direct effort to pursue marginal wells and shut them down.

To appreciate the small business impact, it is important to understand that – unlike one time capital requirements for control equipment – the LDAR program creates an enduring operating cost for the life of the well. Because oil and natural gas wells decline, the cost effectiveness of this requirement changes as the costs must be borne by ever smaller production. When EPA deleted the low production well exclusion for its LDAR requirements, it harmed small business producers. First, the long-term value of wells drilled under the NSPS will be less. They will not be economic as long and particularly will not have value to be sold to small businesses. EPA did not include this consequence in its BSER determinations. Second, if EPA develops a nationwide existing source rule with the same framework, the broad fabric of America's marginal wells (oil and natural gas) will be destroyed.

Control Technique Guidelines

The oil and natural gas production CTG adversely affects small business operators because it applies to low producing operations. The justification fails to consider the costs that must be borne by small operators with low producing wells.

Recommendations

The Trump Administration decision to review the Subpart OOOO and OOOOa regulations can allow for a more thorough understanding of their key components and to make them more cost effective. As a first step, the regulations should be changed for oil and natural gas production to apply to VOC emissions rather than methane. This change would reinstate the basic framework from the 2012 promulgation of Subpart OOOO. It would have little impact on new source emissions reductions of methane since VOC and methane are emitted together and control simultaneously. At the same time, it would eliminate the clearly political decision to create a pathway to nationwide federal regulations of existing sources through rarely used Section 111(d). The primary consequence of applying Section 111(d) to oil and natural gas production facilities is the devastating impact it could have on small business low production wells – an unnecessary consequence that reduces American oil and natural gas production without generating substantial environmental benefits.

Further, the Administration's decision to stay the effective date of the fugitive emissions program in Subpart OOOOa and open the record to reconsider these requirements should lead to a modification of regulations applying to low producing wells – a modification to reflect the distinct differences in the nature of these wells compared to the large hydraulically fractured wells the NSPS were originally conceived to address.

In fact, EPA should utilize its authority under the CAA to create a subcategory within the Oil and Natural Gas Sector that would apply to low producing oil and natural gas wells. At this time, it should reserve that subcategory for possible future use. Such an action would allow for the

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analyses of regulations of these small business operations to be based on their limited emissions and their economics. It would assure that any BSER is applicable to these operations.

The CTG need to now be considered in the context of the Administration's actions on Subpart OOOOa and OOOO. Because these regulations are positioned to be reconsidered, the CTG need to be addressed accordingly. It should be suspended or withdrawn before it becomes a part of SIP revisions. After judgements are made on Subpart OOOOa and OOOO, the CTG need to be reconsidered and any further action should be based on both an accurate understanding of the emissions from existing sources and a true evaluation of the technology requirements as they apply to existing sources. Additionally, a thorough assessment of the impacts on small businesses must be made. Importantly, any such analysis needs to recognize that the dynamics of oil and natural gas production – as the graphics previously presented show – reflects the inevitable turnover of wells. Consequently, as time passes, the inventory of wells will become populated with those that meet the requirements of the NSPS and the existing wells that would be affected by the CTG will be overwhelmingly low producing, small business owned wells.

EPA needs to revamp its NSPS and CTG processes to assure that it has adequate information on the nature of air emissions and the applicability of regulations to manage those emissions. The recent experiences with Subpart OOOOa and CTG, in particular, indicate that EPA failed in its fundamental statutory duties to identify BSER and RACT technologies. It needs to develop and use studies that are regulatory based – and it needs to have the capability to thoroughly understand and analyze external information that is submitted and is specious.

Ozone National Ambient Air Quality Standards (NAAQS)

EPA should reconsider the 2015 revision to the Ozone NAAQS. The Ozone NAAQS can have a bearing on both the NSPS and CTG requirements for oil and natural gas production. American oil and natural gas operations are located where the resources exist. Unlike manufacturing facilities, they cannot choose where to operate. Historically, much of America's oil and natural gas has been located in largely rural areas. Recent development of American shale resources has placed operations closer to populated areas – many of which are in Ozone nonattainment areas. However, EPA's decision to lower the Ozone NAAQS captures areas that have previously been in attainment. The following map provides a perspective on the interaction between American production areas and nonattainment with the new Ozone NAAQS.

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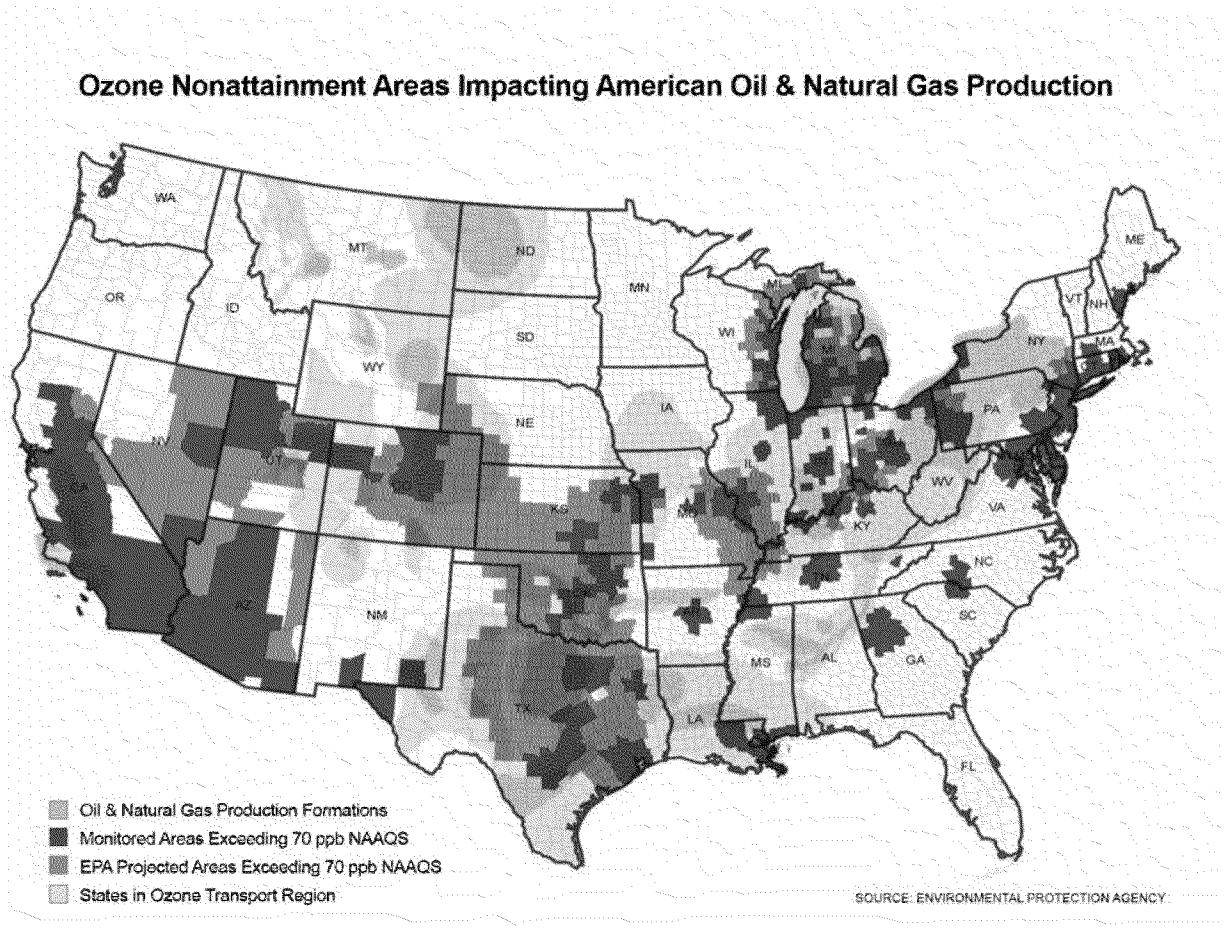

While oil and natural gas production facilities have always been subject to RACM in current Ozone nonattainment areas, the CTG changes the regulatory framework significantly. Part D of the CAA provides for states to impose RACM on existing stationary sources as a part of the requirements to demonstrate attainment or Reasonable Further Progress toward attainment. These RACM requirements, however, apply to stationary sources of a specific size depending on whether an Ozone nonattainment area is classified as Moderate, Serious, Severe or Extreme. Therefore, regulation of existing oil and natural gas production facilities depended both on their size and the status of the Ozone nonattainment area. The CTG in general does not set emissions thresholds for its application. As such, for large or small producers, or large or small emitters, the regulatory burden will apply and will apply far more broadly.

Ozone has consistently been the most difficult primary NAAQS for certain areas to meet. The following figures demonstrate the reality of Ozone NAAQS nonattainment. Figure 1 presents EPA's assessment of the areas of the country that fail to meet the 1997 Ozone NAAQS of 84 ppb (8 hour). Figure 2 presents EPA's assessment of the areas of the country that will fail to meet the 2008 Ozone NAAQS of 75 ppb (8 hour) in 2020. Figure 3 presents EPA's assessment of the 2015 Ozone NAAQS by 2025.

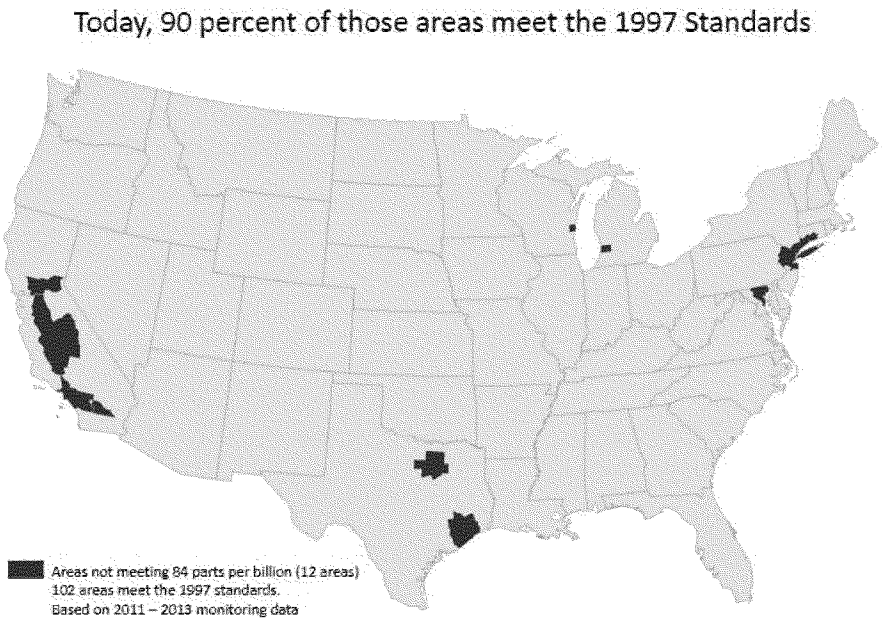

Figure 1

Source: Environmental Protection Agency

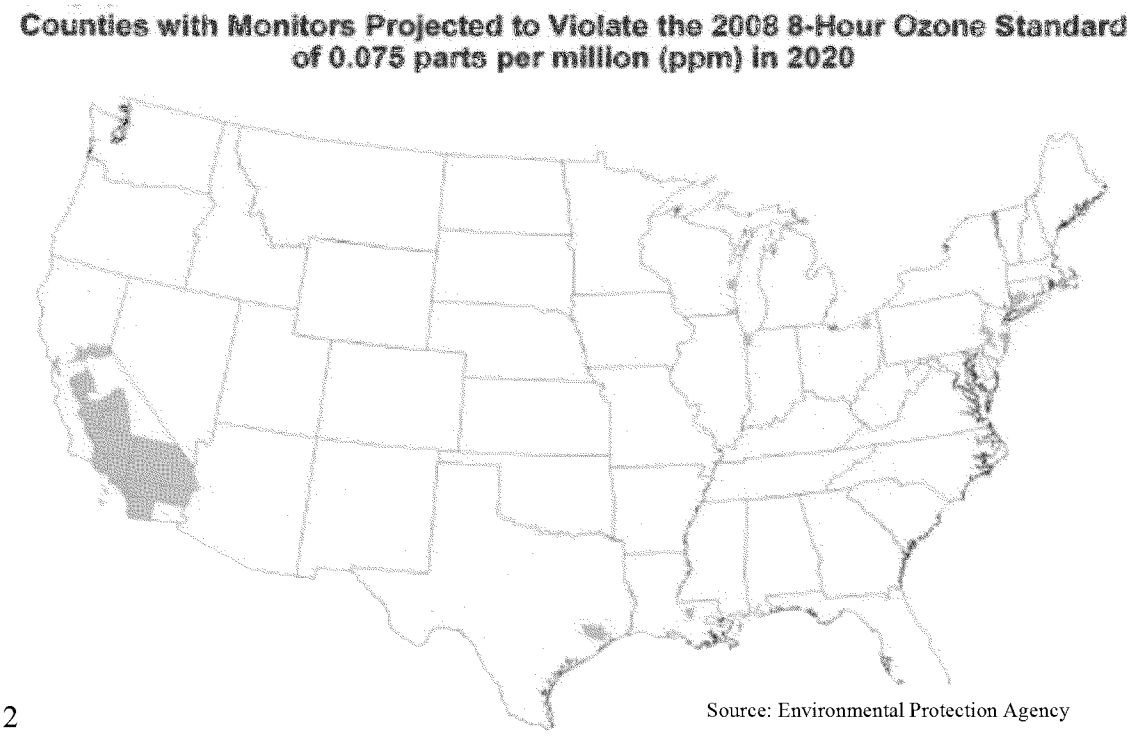

Figure 2

Source: Environmental Protection Agency

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Figure 3

Source: Environmental Protection Agency

EPA's analysis shows that there are certain areas of the country that are enduring Ozone NAAQS nonattainment areas – areas that cannot meet any Ozone NAAQS that has been promulgated. The same areas that failed to meet the 1997 Ozone NAAQS and the 2008 Ozone NAAQS also will fail to meet the 2015 NAAQS by 2025 and, realistically, any time until well after 2030. What this means is that EPA's claimed health benefits from the 2015 NAAQS will not occur in these enduring nonattainment areas.

Equally important, the regulatory requirements in these enduring nonattainment areas will be no different under the 2015 NAAQS than they are under the 2008 NAAQS. These areas are subject to regulation under Part D – Plan Requirements for Nonattainment Areas of the CAA.

Part D was created in the 1990 CAA amendments. It creates a series of specific minimum requirements for each area in Ozone NAAQS nonattainment initially based on the area's ozone monitoring values relative to the Ozone NAAQS. Areas are classified as Marginal, Moderate, Serious, Severe and Extreme. Each classification is given a specific time frame in which to attain the Ozone NAAQS. Importantly, if an area fails to meet the NAAQS in its allotted compliance period, it is reclassified to a higher classification, required to implement the mandatory requirements and given an extension of time to meet the NAAQS. Part D requirements were initiated after the 1990 CAA amendments with attainment dates ranging from 1993 to 2010. Even with attainment date extensions, these dates have passed.

The significant impact of Part D is that perpetual nonattainment eventually produces a baseline of regulations and requirements of additional annual percentage reductions. Since these areas have been subject to Part D for 25 years, their future regulatory requirements will be the same iterative percentage reductions under the 2008 NAAQS as the new one. Adopting the 2015 NAAQS will produce the same regulatory requirements for these areas as the 2008 NAAQS.

EPA has stated in its support documents for its 2015 Ozone NAAQS that:

> Existing and proposed federal rules . . . will help states meet the proposed standards by making significant strides toward reducing ozone-forming pollution. EPA projections show the vast majority of U.S. counties with monitors would meet the proposed standards by 2025 just with the rules and programs now in place or under way.

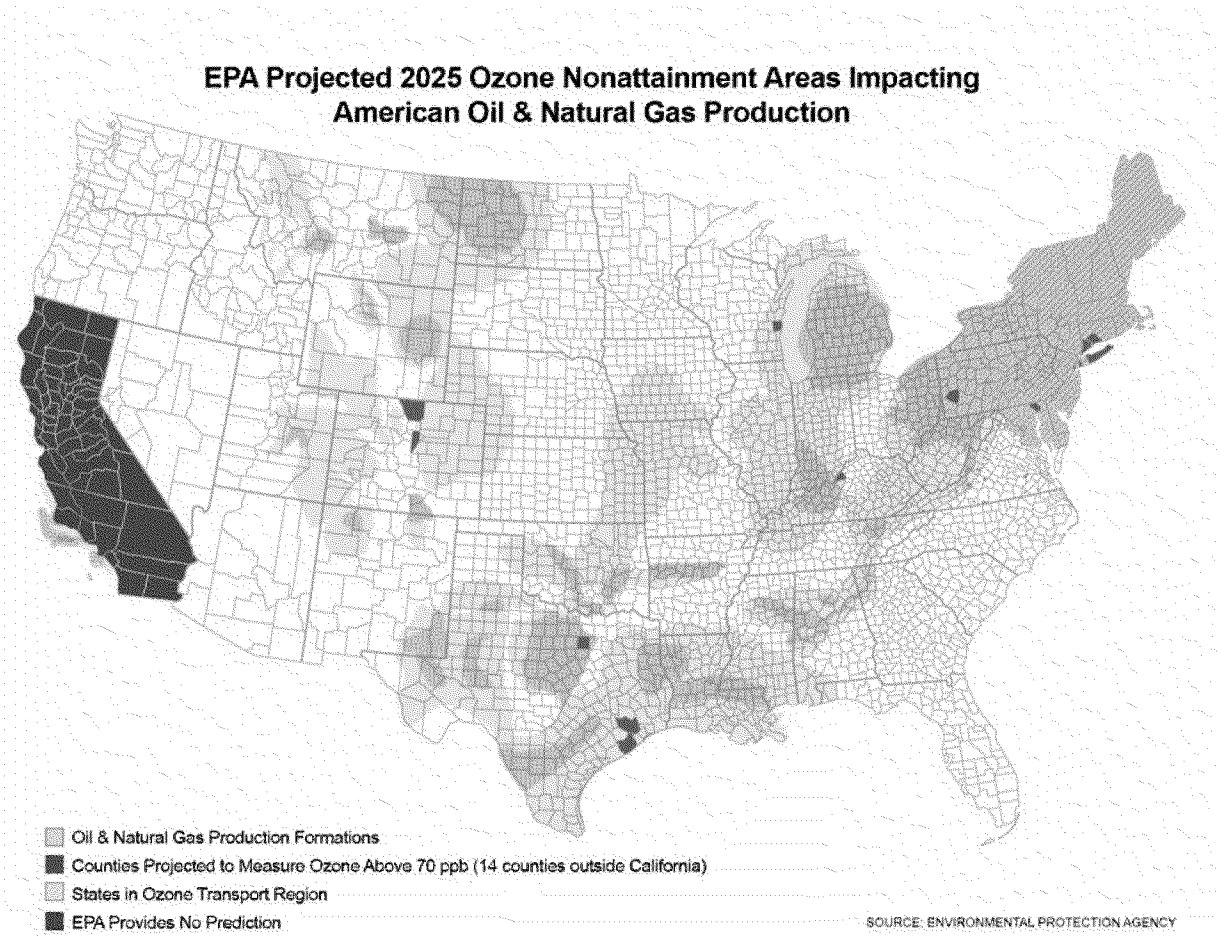
Consequently, these national, federal requirements will essentially protect the overwhelming number of areas that would be placed in Ozone NAAQS nonattainment by the 2015 NAAQS without any of the local actions that would be required from such categorization.

For these areas that EPA projects would reach attainment using only national, federal mandates regardless of the NAAQS, promulgating the 2015 NAAQS will compel them to be subject to the requirements of Part D of the CAA. Because Part D imposes a series of minimum requirements, the 2015 NAAQS will impose emission controls on new sources in those areas, including offsets, which will be burdensome, cost ineffective and unnecessary since EPA believes these areas would reach attainment using only its national regulations.

Once an area becomes subject to Part D, minimum requirements are mandated. For example, all new construction must not only comply with rigorous emissions controls, but all remaining emissions must be "offset" by reductions in existing emissions that are not otherwise regulated. Many of the areas that would fall into initial Ozone NAAQS nonattainment but would later attain the NAAQS are largely rural or with smaller municipalities. These areas will likely have limited existing emissions sources to regulate. These areas will face either an effective construction prohibition or the choice of shutting down existing operations that employ current workers.

The oil and natural gas production CTG get pulled into this murky process. Enduring Ozone nonattainment areas already are a possible target for RACM requirements, but those requirements are predicated on the size of the source and therefore not imposed without consideration of their impact on emissions and with localized consideration of cost effectiveness. For the newly captured Ozone nonattainment areas that EPA believes will meet the 2015 Ozone NAAQS using national, federal regulations – an assessment made without the inclusion of the proposed CTG – the application of the proposed CTG is unnecessary to reach attainment. However, because the CTG would be applied and would be applied to such small sources, these reductions are also removed from the possible pool of emissions that could be managed as a part of emissions offsets needed to build new facilities. In many of these areas, new facilities are likely new oil and natural gas wells. Consequently, the impact of the CTG would be to limit new production.

As the following graphic shows, EPA projects that only a few areas will remain in Ozone nonattainment in 2025.



This projection is based on regulatory actions taken without the CTG. It demonstrates that the CTG is not essential to Ozone NAAQS attainment. Certainly, in some enduring nonattainment areas some oil and natural gas production facilities would be subject to RACM, but these decisions would be based on local conditions and the economic circumstances of the oil and natural gas production operations in those areas. The CTG would make all oil and natural gas production operations subject to the CTG without a compelling need – based on EPA's own projections of Ozone attainment – and without the opportunity to assess local need. Moreover, it would eliminate possible actions that could facilitate new construction as offsets and thereby unnecessarily threaten economic growth in these areas.

Recommendations

EPA should reconsider the 2015 Ozone NAAQS revision. Given that the enduring Ozone nonattainment areas fail to attain the 2015 NAAQS and would be essentially undertaking the same regulatory program as under the 2008 NAAQS, the health claims for the 2015 NAAQS need to be carefully reviewed. Additionally, if the areas that become nonattainment as a result of a lower NAAQS but would attain it without local controls, there are no additional health benefits in those areas but there would be unnecessary regulatory consequence that should not be compelled on these communities.

WATER REGULATIONS

The Clean Water Act (CWA) can impact American oil and natural gas producers in several ways. The most prominent involve regulations that result from interpretation of Waters of the United States (WOTUS) and Effluent Limitations Guidelines (ELG).

Waters of the United States

Oil and natural gas are found throughout the United States. Significant reserves underlie arid areas. These operations are distant from waterbodies. However, resolving the ongoing deliberations on the scope of the navigable waters definition can have significant consequences.

Most notably, certain elements of the CWA are linked to whether they affect navigable waters. For example, the Spill Prevention, Control and Countermeasures (SPCC) planning requirements are based in part on the amount of oil at a site and in part on whether a potential spill would reach navigable waters. Consequently, a WOTUS definition that reaches well beyond truly navigable waters and adjacent wetlands can subject facilities that would never actually impact them. Yet, the SPCC plan regulations require substantial capital investment for the construction of protective equipment. If the likelihood of a spill affecting navigable waters is miniscule, these requirements are neither cost effective nor environmentally beneficial.

Another significant WOTUS related issue involves CWA Section 404. Here again, the CWA requires dredge and fill permits if navigable waters are affected. All oil and natural gas production facilities require construction of necessary pads for operation. When this construction must take place near waterbodies, the necessity of obtaining a Section 404 permit is understandable. But, when construction occurs in arid topography – far from waterbodies – Section 404 permits are neither necessary nor appropriate.

Small Business Implications

For small business operators, complying with costly planning and investment requirements that are distant from navigable waters diverts capital from the necessary expenditures to keep wells operating, particularly low producing wells.

Recommendations

The Trump Administration decision to act on the WOTUS regulations to reflect the Scalia decision in the *Rapanos v. United States* case is a sound first step to pull the scope of CWA jurisdiction back toward Congressional intent in its 1972 CWA legislation. At that time, the context of navigable waters was far clearer than it now appears to be. Then, during Senate and House of Representatives debate on the CWA, the definition relied on a widely understood use of the term "navigable waters". Only when the CWA was reported by a House-Senate conference committee did the term "waters of the United States" appear. Anyone familiar with the chaos of Congressional debate during the deliberations of a conference report knows that it would not have drawn the attention that it has lastingly produced.

Effluent Limitations Guidelines

Waste water discharges are regulated through the development of ELG. ELG then become the basis for National Pollutant Discharge Elimination System (NPDES) permits by either state or federal permitting agencies. The ELG for direct discharges from oil and natural gas production

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facilities was written in 1979. Generally, it prohibits oil and natural gas produced water direct discharges. While this conclusion was arguably not Best Available Control Technology Economically Achievable (BATEA) – the CWA requirement for waste water treatment – even in 1979, it reflected that the widespread use of underground injection of produced water was the preferred option for over 95 percent of produced water volumes at that time. No major review has occurred since, but the industry has changed.

In recent years, EPA turned again to produced water discharges from oil and natural gas production operations. First, it evaluated possible ELG for coal bed methane production but ultimately chose not to pursue it. Then, it turned to shale gas production, largely triggered by issues in Pennsylvania where underground injection options are limited.

EPA created pretreatment standards for discharges of wastewater from onshore unconventional oil and gas (UOG) extraction facilities to municipal sewage treatment plants (also known as publicly owned treatment works, or POTWs). The UOG extraction facilities POTW pretreatment ELG creates two issues that need to be addressed.

First, in defining UOG extraction facilities, EPA missed the mark. While EPA publicly described the scope of its ELG as applying to shale formations considered to be unconventional, its final rule included formations considered as conventional formations that had been developed for decades prior to the advent of shale gas.

Second, and more significant, EPA failed to meet its fundamental mandate to develop ELG based on BATEA. The BATEA concept requires EPA to identify technologies that manage the waste in effluents, determine if the technology is available as a commercial application, and assess whether it is economically achievable. In its UOG extraction facilities pretreatment ELG, EPA identified no technologies and made no economic analysis – though technologies exist. Instead, it merely concluded that it would prohibit discharges to POTWs from UOG extraction facilities. It argued that underground injection and recycling would be available as a management option. But the reality is that underground injection in some states – notably Pennsylvania – is not an option and cannot be assumed to always available. Similarly, recycling of produced water is an option when drilling activity is high enough to consume the water, but as EPA finalized the ELG, drilling activity and recycling were declining.

We addressed these issues and EPA's positions more extensively in comments filed on the EPA proposal in our comments in July 2015 as follows:

> Once EPA initiated the process to develop a pretreatment ELG for UOG extraction waste waters sent to POTWs, it needs to fully assess the potential implications of its actions on current and future management of this waste water. As EPA states:
>
> > EPA develops ELGs that are technology-based regulations for specific categories of dischargers. EPA bases these regulations on the performance of control and treatment technologies. The legislative history of CWA section 304(b), which is the heart of the effluent guidelines program, describes the need to press toward higher levels of control through research and development of new processes, modifications, replacement of obsolete plants and

> processes, and other improvements in technology, taking in to account the cost of controls. Congress has also stated that EPA need not consider water quality impacts on individual water bodies as the guidelines are developed….
>
> There are four types of standards applicable to direct dischargers (facilities that discharge directly to surface waters), and two types of standards applicable to indirect dischargers (facilities that discharge to POTWs), described in detail below.

More specifically, in describing Pretreatment Standards for Existing Sources (PSES) and New Sources (PSNS), EPA states:

> …section 307(b) of the Act calls for EPA to issue pretreatment standards for discharges of pollutants from existing sources to POTWs. Section 307(c) of the Act calls for EPA to promulgate pretreatment standards for new sources (PSNS). Both standards are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Categorical pretreatment standards for existing sources are technology-based and are analogous to BPT and BAT effluent limitations guidelines, and thus the Agency typically considers the same factors in promulgating PSES as it considers in promulgating BAT. … Similarly, in establishing pretreatment standards for new sources, the Agency typically considers the same factors in promulgating PSNS as it considers in promulgating NSPS (BADCT)[2].

These statements clearly envision a process that assesses technology designed to meet specific standards whether they are Best Practicable Technology (BPT) or Best Available Technology (BAT) or BADCT. These concepts include analyses of the technologies that can be applied to the waste water being addressed, evaluating the reductions achieved and the costs. But, EPA did not undertake such a robust analysis in this case. Rather, as EPA states:

> EPA does not propose an option with numerical discharge pretreatment requirements prior to discharge to a POTW for the following reasons. First, the existing requirements for direct discharges of UOG extraction wastewater in the Onshore Subcategory require no discharge of pollutants. As explained above, EPA generally establishes requirements for direct and indirect discharges so that the wastewater receives comparable treatment prior to discharge to waters of the U.S.
>
> Second, the option EPA proposes, zero discharge of pollutants in UOG extraction wastewater to POTWs, is widely available, economically achievable and has no incremental (and, therefore,

[2] Best Available Demonstrated Control Technology

acceptable) non-water quality environmental impacts. Because the proposed zero pollutant discharge requirement is current practice and, therefore, clearly both available and achievable, any option that includes non-zero discharge requirements for any pollutants would potentially increase pollutant discharges from current industry best practices. Such an option would not fulfill the CWA requirement to establish limitation s based on ''Best Available Technology Economically Achievable'' (CWA section 301(b)(2)(A)), or the CWA goals of eliminating the discharge of pollutants in to navigable waters (CWA section 101(a)(1)).

Third, EPA does not have any data to demonstrate that UIC capacity nationwide will be expended and that this current management approach will not be available in the future (DCN SGE00613). In fact, industry has been managing oil and gas extraction wastewater through underground injection for decades. In recent years, industry has greatly expanded its knowledge about the ability to re-use UOG flowback and long-term produced water (the major contributors to UOG extraction wastewater by volume) in fracturing another well. Consequently, while the UOG industry continues to grow and new wells are being fractured, the need for UIC capacity for UOG extraction wastewater is decreasing, even in geographic locations with an abundance of UIC capacity (see TDD Chapter D.2).

Fourth, EPA identified technologies that currently exist to treat dissolved pollutants in UOG extraction wastewater. Relative to underground injection and reuse/recycling to fracture another well (the basis for the preferred option EPA proposes), these technologies are costly, would result in more pollutant discharges, and are energy intensive. While EPA did not attempt to calculate a numerical standard for TDS, data collected for this proposed rulemaking demonstrate that the current technologies are capable of reducing TDS (and other dissolved pollutants) well below 500 mg/L. To the extent that these technologies or others are developed in the future to reduce pollutants in UOG extraction wastewater to enable them to be reused for purposes other than fracturing another well, these pre-treated wastewaters can be used directly for the other applications without going through a POTW.

Looking at each of these reasons separately demonstrates that EPA has not made a plausible argument for failing to develop a numerical standard.

First, while EPA indicates that it "…generally establishes requirements for direct and indirect discharges so that the wastewater receives comparable treatment prior to discharge to waters of the U.S.", it should recognize that relying on a 39 year old ELG as a basis for action raises a strong signal that a more analytical

approach is necessary. Similarly, if the Agency's decision to imbed its pretreatment ELG in the Onshore Subcategory becomes a barrier to making a more thoughtful approach to define a numerical standard because of this general comparability framework, EPA should create a new Subcategory that would allow for a result that reflects the future more than the past.

Second, while UIC Class II wells are clearly an effective management option for UOG extraction waste waters, injection is not a treatment technology. Rather than assume the availability of UIC as the only technology to be used by the industry to manage its waste water – a decision that relies on unsubstantiated determinations of its widespread future availability – EPA should define a numerical, technology based BATEA for managing UOG extraction waste waters. Once the BATEA is determined, the issue of whether it is more cost effective than UIC will be a determination by the discharger. But, for those instances where UIC is not readily available – such as the circumstances that drove Pennsylvania producers to use POTWs – there would be an alternative that EPA has determined meets the technology standards of the CWA.

Third, EPA's action hinges on its assumptions that UIC capacity will continue to be a viable and cost effective option for all UOG extraction waste waters. Yet, its supporting material for this conclusion is thinly substantiated. One of its cited documents – DCN SGE00613 – is a Meeting Summary from a February 2013 meeting with industry representatives. IPAA was a participant in the meeting. EPA deduces from this document that "EPA does not have any data to demonstrate that UIC capacity nationwide will be expended and that this current management approach will not be available in the future." This meeting never delved into a deep discussion that would yield such a conclusion; it was a general briefing to describe the nature of oil and gas extraction, the technologies that manage waste water for disposal or reuse, and the cost effectiveness of various waste water treatment to manage TDS. The text of the document states:

> There is no widespread discussion in the industry about lack of injection for disposal capacity but one area that tends to have lower capacity is the Marcellus region. This is because the states of Pennsylvania and West Virginia require produced water be disposed of in the zone from which it was removed or deeper. Because of its depth, disposal into zones deeper than the Marcellus shale is not feasible.

If anything, this document emphasizes the limitations in certain regions regarding the availability of injection wells. But, it is clearly not a robust assessment of future UIC capacity. EPA also references issues regarding future UIC capacity based on a second document – TDD Chapter D.2[3] – by stating:

[3] Technical Development Document for Proposed Effluent Limitations Guidelines and Standards for Oil and Gas Extraction, EPA-821-R-15-003, March 2015

> Consequently, while the UOG industry continues to grow and new wells are being fractured, the need for UIC capacity for UOG extraction wastewater is decreasing, even in geographic locations with an abundance of UIC capacity.

However, this document does not assess future capacity issues; it merely reports on the current number of Class II disposal wells.

Industry sees a different and much less certain picture of future UIC capacity.

- One, as EPA reports, but later ignores, there are some areas where UOG extraction is intense – such as the Marcellus Shale – where UIC capacity does not exist.
- Two, because UOG extraction well waste water cannot be reinjected for oil or gas recovery, this waste water must be sent to UIC disposal wells or managed. As a result, there will be pressure to expand existing disposal wells or drill new ones.
- Three, EPA discounts this pressure by emphasizing waste water recycling/reuse. Recycling and reuse are viable and valuable but they are not a panacea. Real limits on recycling/reuse include the pace of new well development, the proximity of new wells to the waste water, the adequacy of water volumes in a specific area and the contaminant levels in the water. Moreover, as certain fields become more production-focused, as opposed to having aggressive active exploration, there are greater needs to manage produced water and even fewer opportunities to recycle/reuse it for fracturing operations. As such, recycling/reuse activities are not only driven by the intensity of drilling activities in a certain resource play but by its stage of development. As time progresses, the Marcellus Shale, for example, will experience an even greater need for disposal options.
- Four, in the time period that EPA has been developing this ELG proposal, the regulatory framework for Class II UIC wells has been subjected to new challenges, particularly for disposal wells. As environmental fossil energy/fracturing opponents have failed to show that state regulated fracturing presents unmanageable environmental risks, they have turned to other elements of unconventional oil and gas production. One of these is UIC disposal. Over the past several years issues related to triggered seismicity have been imputed to UIC disposal wells. These allegations threaten new well permits and existing operations whether caused by technical regulatory constraints or local opposition. Similarly, EPA initiated a review of the process that states use to exempt aquifers from regulation under the SDWA. Aquifers related to oil and gas extraction have historically been excluded from the SDWA scope but if changes are made to areas that are possible disposal sites, future UIC options could be diminished. Primacy delegation under the SDWA is being challenged. Efforts are active to stir up opposition to waste water movement from one state to another. Collectively, these challenges to

UIC Class II disposal options can limit future capacity at a time when assumptions about reuse must be cautious not ebullient.

Consequently, EPA's reliance on the past success of UIC to serve as the basis for a zero discharge ELG is misplaced.

Fourth, EPA too readily dismisses treatment technologies as "...costly, would result in more pollutant discharges, and are energy intensive" compared to UIC or reuse. These technologies may be more costly and result in pollutant discharges. However, the CWA does not demand that BATEA be inexpensive and discharge free. It requires that the technology be what the description says – the best available technology economically achievable. It is EPA reliance on a non-CWA management technology – injection wells under the SDWA – that brings about that comparison. And, as stated above, EPA reaches the conclusion to rely on Class II UIC disposal wells too cavalierly.

Instead, EPA needs to fully assess a variety of technologies – most of which have been developed as a part of the industry recycling and reuse initiatives – to determine their capacity to manage waste water in the context of pretreatment. These technologies might include sedimentation, filtration, chemical precipitation, dissolved air flotation, biological treatment, reverse osmosis (RO), forward osmosis (FO), evaporation (no recovery), evaporation with condensation, membrane distillation, and crystallization. Certainly, these technologies produce different outcomes and are appropriate for different waste waters. Their costs and their effectiveness will differ. But, until EPA evaluates them, no one knows which may constitute BATEA for pretreatment. For example, the following table presents some framework of technologies that might be considered for recycling and reuse. They may bear on a BATEA analysis as well, but EPA needs to make the analysis necessary for such a determination.

Treatment Technology	Max TDS Recommended for Treatment (ppm)	Relative Cost	Commercially Available
Reverse Osmosis Membrane	50,000	$	Yes
Forward Osmosis Membrane	100,000	$$	No
Evaporation*	200,000	$$	Yes
Membrane Distillation	280,000	$$	No
Crystallization	500,000 +	$$$$$	Yes

While EPA may raise questions about whether they are too costly compared to other options, ultimately, it is the producer that will have to make an economic decision among the various options available. By making no BATEA analysis of technology options, EPA prevents that decision from being considered.

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EPA needs to reconsider the UOG extraction facilities pretreatment ELG and determine appropriate BATEA for actual unconventional oil and natural gas development.

Small Business Implications

Taken together, EPA's action to cover conventional oil and natural gas production and to prohibit the discharge of conventional produced water to POTWs in addition to its prohibition of direct discharges of produced water can fall most heavily on small business operators. State permitting agencies have the responsibility to protect their waters – and they do so effectively. Even without an ELG, state permit writers must determine whether a discharge option is appropriate and to define technology options using Best Professional Judgement (BPJ) decisions under the CWA. If a state has determined that it can meet its water management responsibilities and allow conventional oil and natural gas produced water to be managed in POTWs, EPA should not preclude it, particularly if that option is essential to small businesses.

Recommendations

EPA needs to reconsider at least the 2016 ELG for onshore UOG extraction facilities POTWs. EPA's absolute failure to develop technology based BATEA requirements undermines the fundamental premise of the CWA and sets a precedent for all future oil and natural gas production ELG decisions that now rely on decisions made in 1979 regarding a vastly different industry.

SOLID WASTE REGULATIONS

The Resource Conservation and Recovery Act (RCRA) defines the federal management structure for hazardous (Subtitle C) and nonhazardous (Subtitle D) solid wastes. Oil and natural gas production operations produce wastes that must be managed as solid wastes, primarily drilling fluids and produced waters at production sites. Ultimately, produced water is regulated under the federal CWA or Safe Drinking Water Act (SDWA). In 1980, Congress concluded that state regulatory programs managing oil and natural gas production wastes were designed to apply to those wastes and that Subtitle C was not an appropriate option. In 1988, EPA completed a Congressionally mandated Regulatory Determination concluding that:

> RCRA Subtitle C was not appropriate for oil and natural gas production wastes;
>
> State programs were effectively managing these wastes; and,
>
> Applying RCRA Subtitle C to production wastes would significantly and adversely affect American oil and natural gas production.

Since that decision, Keep It in the Ground environmental advocates have repeatedly sought to subject oil and natural gas production wastes to federal requirements knowing that it would result in devastating consequences for American production.

Recently, these groups turned their attention to Subtitle D and extracted a consent decree from EPA to determine if it needs to develop federal regulations under Subtitle D.

EPA has a long history working with states since its 1988 Regulatory Determination. Some of this activity has been formal such as the state review programs initiated after the Regulatory Determination and currently conducted through the STRONGER (State Review of Oil and Natural Gas Environmental Regulations) process. Other actions have been informal working

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with individual states, with the Interstate Oil and Gas Compact Commission (IOGCC) and with the Ground Water Protection Council (GWPC). Given these ongoing interactions with state programs, EPA clearly understands the effectiveness of these programs.

Subtitle D frames very general authority for EPA. However, there are some provisions that were used by the environmental groups to trigger the litigation leading to the consent decree. These are:

> 40 CFR, Part 257 – **Criteria for Classification of Solid Waste Disposal Facilities and Practices** - establishes regulatory standards to satisfy the minimum national performance criteria for sanitary landfills. These criteria established standards for determining whether solid waste disposal facilities and practices may pose adverse effects on human health and the environment. Facilities that fail to meet the criteria are "illegal dumps" for purposes of state solid waste management planning efforts under Subtitle D. *The criteria provide the basis for enforcing the prohibition on "open dumps" and may be used by citizens' suits in Federal District Court.*
>
> 40 CFR, Part 256 – **Guidelines for Development and Implementation of State Solid Waste Management Plans** – establish the elements that state solid waste management plans must contain to qualify under RCRA Subtitle D.

EPA has rarely utilized its authority under these sections of RCRA. However, each of these sections include requirements used by the environmental groups arguing that EPA must review its Subtitle D programs every 3 years and determine whether it needs to develop federal regulations and state guidelines or if the current programs, including state regulations, are adequate.

Now, under the consent decree, EPA must determine whether to act under these sections by March 2019. EPA can determine that state programs are – as they clearly have been – effective in managing production wastes and no action is needed under Subtitle D. Or, EPA can propose a Subtitle D federal program. Given the unique nature of these wastes, neither Subtitle C nor Subtitle D provide a framework for a production wastes regulatory structure – particularly a national regulation that could not reflect the different environments of the oil and natural gas producing states. Moreover, Subtitle D does not compel states to adopt federal regulations. With regard to production wastes, the clear history of successful, well managed state regulations means that states would not choose to sacrifice their programs for an untried federal one.

However, if EPA created Subtitle D regulations, that action would expose independent producers to litigation by environmental agitators. Under RCRA, citizen suits can be directed at individual operators that fail to comply with federal regulations. Consequently, a producer complying with state regulations that do not adopt the federal requirements would be exposed. Clearly, this is an objective of Keep It in the Ground environmentalists that use litigation as a tool to stop production, as recent efforts to use RCRA to litigate against producers regarding underground injection alleged to induce seismic events demonstrates. While that initiative was rejected in federal courts, it demonstrates the strategy that would arise if EPA writes Subtitle D federal regulations.

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Small Business Implications

Small business operators are a risk if EPA were to develop unnecessary federal Subtitle D regulations. They would be convenient targets for Keep It in the Ground environmentalists to attack with citizen suits knowing that the litigation costs would severely tax small business resources.

Recommendations

EPA should act in 2017 to publish a determination that it does need to develop oil and natural gas production waste regulations under Subtitle D. An early action would demonstrate that the historic federal-state relationship on managing production wastes remains strong.

SAFE DRINKING WATER ACT

Exempted Aquifers

On March 23, 2016, the Natural Resources Defense Council (NRDC) filed a petition with EPA under the Administrative Procedure Act (APA) seeking changes to the aquifer exemption (AE) program under the SDWA.

Among other things the petition demands that EPA:

1. Impose a moratorium on all AE r elated decisions including granting new exemptions or expanding the boundaries of existing exempt areas.
2. Update the regulations and cri teria for designating exempt aquifers through a formal rulemaking process.
3. Eliminate criteria that all ow aquifers to be exempted when hydrocarbons are demonstrated to be naturally occurring in the groundwater.
4. Consider increasing the thre shold for Underground Source of Drinking Water (USDW) protection from 10,000 mg/L TDS to as high as 40,000 mg/L TDS.
5. Revisit all previously issue d exemptions to determine if the exemptions should be rescinded based on the new criteria.

The NRDC asserts that new information has arisen since the aquifer rules were written, and that EPA must update its rules to account for increasing groundwater demand, climate change, and technological advancements for brackish groundwater desalination.

Class II injection wells are essential to oil and natural gas production. Primary uses of injection wells include the injection of water, steam, and CO_2 to conduct enhanced oil recovery (EOR) and water disposal associated with oil and natural gas production in areas where no other disposal options are available. Without the ability to utilize Class II injection wells, American oil and natural gas production in many areas of the country would be dramatically curtailed or shut in altogether.

Under the SDWA, Class II injection activity is allowed in areas where the groundwater quality exceeds the USDW threshold of 10,000 TDS mg/L. Injection where the groundwater contains less than 10,000 TDS mg/L is only allowed in areas that have been formally exempted pursuant to a state application that has been submitted to EPA. EPA maintains general criteria that an application must demonstrate in order to qualify for an exemption, not the least of which is that

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the area proposed for exemption does not supply drinking water, and cannot feasibly be expected to economically provide drinking water. The existing criteria require extensive geologic and water quality information to be submitted in order to gain approval and provide significant flexibility to allow the state and federal agencies involved in the review to consider site specific factors that are relevant to the decision.

The proposed actions sought in the NRDC petition could potentially halt the ability of states to permit new injection wells until EPA conducts a multiyear rulemaking proceeding. Development of new water disposal and EOR wells would likely be placed in limbo while EPA reviews the status of areas that have been exempt for more than thirty years and considers whether to revise the definition of a USDW. State regulatory agencies in areas where the groundwater exceeds 10,000 mg/L TDS could prospectively be forced to spend considerable resources preparing applications to go through the federal exemption process as a condition of maintaining operations they had already permitted and were actively regulating.

In California, the third largest producing area in the country, EPA Region 9 directed the California Division of Oil, Gas & Geothermal Resources (DOGGR) in 2010 to update the exemption boundaries for more than 50 oil fields throughout the state. More than 25 applications have already been prepared using the current approved criteria and are being submitted to EPA for review. New drilling in many areas of the state has been put on hold for the past several years while the scientific based applications have been under development. Approval of the NRDC petition would essentially nullify the significant resources that have been expended in an effort to comply with EPA's directive and would extend the drilling moratorium in perpetuity.

Abrupt agency approval of the application would also likely lead to a significant reduction in drilling new production wells. Without adequate injection well capacity to handle produced water, some producers may be forced to suspend capital investments in new production wells. Many areas with oil and natural gas resources would likely be precluded from development altogether if the resources require EOR operations or the operators do not have access to reasonable methods of produced water disposal and management. Major oil and gas producing states impacted by this review include: California, Utah, Colorado, Wyoming, North Dakota, Texas, Louisiana, Ohio, and Oklahoma.

The lack of confirmed impacts to groundwater from oil and natural gas related injection activities validates that the historic criteria used by EPA has served to protect areas with true groundwater supply potential. Furthermore, the existing criteria provide the state regulatory agencies significant flexibility in making decisions to protect local groundwater resources while facilitating new oil and natural gas development.

The goal of the NRDC petition is to dramatically advance the "Keep It in the Ground" agenda by imposing a multiyear moratorium on a critical type of well that is essential to supporting existing and new oil and natural gas operations.

Small Business Implications

Class II injection wells are the widely available technology to manage produced water or to use produced water for secondary recovery in conventional wells in most producing formations. Loss of access to Class II wells for small businesses would prevent the continued operation of many low producing wells.

Recommendations

EPA retains considerable discretion under the APA on how quickly it must respond to petitions.

It can choose to grant approval and initiate a rulemaking proceeding, or deny the petition outright. Since there are no timing restrictions that guide EPA's response, the agency can act promptly and without significant public notice, or it can delay its response for an extended period. EPA is not required to hold a public comment period before it takes action on a petition.

EPA should act to deny the NRDC petition and continue to use the current process to determine aquifer exemptions. Additionally, EPA regions should be directed to work closely with states to facilitate their determinations.

STATE DELEGATION

Major federal environmental laws hinge on an effective federal-state relationship. At the heart of this relationship is the distribution of responsibilities between the governments. When Congress created its federal environmental laws, it recognized the joint realities that most states already operated environmental regulatory programs and that the Congress would never create nor fund a competing federal program. Consequently, it turned to the approach of partnering with the states through the process of delegating federal authority to the states. As a result, the federal government's role is principally creating national standards, authorizing state management of federal law, stewarding state regulatory actions, addressing interstate and international issues and funding for research and state support. State regulators are the primary creators for the regulatory requirements that permit and managing environmental emissions and discharges.

This balance creates an effective system that is predictable. However, it functions best when each partner stays within its fundamental responsibilities. Unfortunately, for American oil and natural gas production, over the past 8 years, federal agencies aggressively acted to expand the scope of regulation to provide pathways for federal action in spite of state regulations.

This effort creates unnecessary conflict with states. States have effectively managed the environment within their borders and have crafted regulatory systems that reflect their specific circumstances. EPA cannot, through national regulations, create the flexibility necessary address these differing situations. Additionally, EPA has initiated enforcement actions that have attempted to usurp the regulatory roles of states – actions that have not been justified.

For industry, confronting different regulatory demands from states and the federal government is both costly and confusing – exposing them to possible penalties that are out of their control. Industry is prepared and committed to meeting its environmental management responsibilities, but it needs certainty and it seeks the most cost effective approach to action.

Expanded delegation of federal authority to states is the straightforward path to improve this situation. However, EPA needs to recognize that much of the delegation process was conducted decades ago when federal laws were initially passed. Consequently, EPA needs to determine if the current delegation process is still workable. State regulatory programs are different now with a mature understanding of how to effectively regulate. In the past, EPA has put limits on delegation based on its understanding of the regulatory processes at the time; these structural constraints need to be examined and revised if appropriate – actions that should be taken in conjunction with the states.

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Funding is another key factor. State budgets face similar constraints faced by the federal budget. However, states will not be positioned to undertake greater delegated responsibilities without adequate funds. EPA must address this need.

Small Business Implications

By their nature, regulatory burdens are always more difficult for small businesses. In this case, the burdens of multiple state and federal permits, of state and federal regulatory compliance, of duplicative state and federal reporting need to be recognized and minimized.

Recommendations

EPA needs to expand and enhance delegation of regulatory authority to states. It needs to eliminate barriers that may exist.

The Trump Administration needs to work with Congress to assure that adequate funding is provided to states to encourage delegation.

ENFORCEMENT

Without question, compliance with environmental regulations is a clear and certain responsibility of every oil and natural gas producer. Equally certain, regulators have the responsibility to assure that compliance occurs and to enforce compliance when necessary. Two challenges, then, are what entities should enforce and how should that enforcement take place.

State agencies are the primary enforcers of their regulations. However, EPA can exert its enforcement authority when it concludes that a state is not adequately managing a federally delegated program or where there is no state authority – for example, under a Federal Implementation Plan under the CAA or where the state has not been delegated authority.

From our perspective, EPA needs to thoroughly review and revise its federal enforcement process. It needs to create an enforcement program that treats the regulated community with fairness, respect and dignity. It needs to eliminate the use of excessive threatening tactics, egregious fine proposals and enforcement to compel regulation where EPA has no authority.

For example, in North Dakota EPA Enforcement initiated an aggressive action related to the storage tank component of Subpart OOOO. It targeted a private company, rather than a publicly held company. It threatened the company with fines that would exceed the company's value and possibly the entire assets of the family owners. Its basis for action relied on interpretations of the regulation that differed from those provided by EPA's technical staff. And, of course, it then used these threats not only to compel operational changes to the storage vessels, but to demand additional actions beyond the scope of the regulations. This type of egregious enforcement must be halted.

Small Business Implications

Small businesses should not be the convenient targets of the federal litigators' unlimited budgets. EPA's Enforcement Office should not target small business companies where it hopes to use its essentially unlimited power to subjugate them to meet its interpretation of regulations.

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Recommendations

Unfortunately, Keep It in the Ground environmentalists clamor to the press and plaster the internet with allegations that any change to scrutinize the current enforcement approach at the Agency is tantamount to an abdication of federal responsibilities. In reality, the current EPA enforcement program appears to be too loosely managed. As a result, EPA Regional Offices and each Headquarters Program office can initiate and pursue enforcement actions without any coordinated standards. EPA needs to create a consistent set of standards and expectations.

Any federal agency can unleash an abusive enforcement program and justify it as necessary to make sure the regulated community is held accountable. But, the regulated community is overwhelming committed to complying with its regulatory burden. It, after all, lives in the communities where it operates. And, it must meet its shareholders' expectations as a good corporate citizen.

EPA needs to craft an enforcement program that assures that federal laws are being properly implemented, but not one that seeks to use its authority to seek actions beyond the scope of the law. It needs to be forceful but fair and respectful. It needs to be an enforcement program that is accountable.

COST EFFECTIVENESS CALCULATIONS

A key component of regulatory development involves the determination of the costs and benefits of regulations. Clearly, any such process is an open invitation for abuse. Costs can be understated; benefits can be overstated. History indicates that both have been done to produce a result that falls within whatever target has been set.

Recently, one of the regulatory arenas where obvious abuse has occurred is the development of benefits to justify climate change related regulations. The most notable area of abuse is the creation of the Social Cost of Carbon, Nitrous Oxide and Methane. The generation of these costs were cloistered and obscure. The process did not allow for the openness needed to have any confidence in its application. And, in its use, agencies were able to apply it to conveniently adjust estimates when needed. The March 28, 2017, Executive Order eliminating Social Cost use was entirely appropriate to bring certainty and confidence to the regulatory review process.

Yet, other calculations – less visible, less obviously manipulated – were similarly abused in regulatory analyses. For example, in the justification for Subpart OOOOa, EPA based its recovered methane basis and its economic evaluations on natural gas prices that were wholly inaccurate. Specifically, EPA used a methane value of $4.00/mcf. For a producer to receive $4.00/mcf for its gas sales, the market price would have to be about $5.33/mcf to account for royalties and fees. Currently, natural gas prices are ranging around $3.00/mcf, meaning that the producer would be getting about $2.25/mcf. This significant overestimate of the value of natural gas roughly doubles the benefits of methane regulations without the imposition of Social Cost benefits. EPA never brought its cost effectiveness calculations into the realistic framework of actual natural gas prices.

Recommendations

As EPA reconsiders regulation of oil and natural gas production facilities, it needs to fully recognize that the economic calculations regarding cost effectiveness should be revised.

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CONCLUSION

These issues are examples of issues that directly affect independent producers from EPA regulations and potential regulations. The fundamental problem, however, is EPA's failure to do the work to understand American oil and natural gas production. A former EPA Administrator was reported as stating:

> EPA's learning this industry right now because it is not an industry we regulate. We've just gotten into regulation of this so there's a lot of hundreds of thousands of small sources and EPA does not generally have a relationship with this industry as we do other sectors that we've regulated for frankly decades. But we are learning.

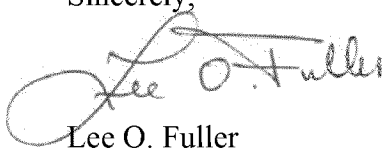
Unfortunately, EPA has been regulating before it has learned. Unlike most industries, oil and natural gas production begins to decline soon after it starts. The industry is comprised of large and small businesses with most low producing wells operated by small businesses. Regulations that might be cost effective when a well is new will not be after it declines and certainly when it is a low producing well. Imposing regulations designed for new sources on existing sources will almost certainly threaten their existence.

EPA has the authority to subcategorize its regulatory actions. For example, it has the capacity to distinguish between large and small sources – or to exclude small sources altogether – or to delay regulation of small sources until it has the information to understand how to develop small source cost effective regulations. But, it has chosen not to utilize this flexibility – at least in its recent actions.

EPA needs to recast its thinking. It needs to develop the understanding of the industry that it does not have.

IPAA appreciates the opportunity to submit these comments. If additional information is needed, please contact Lee Fuller at lfuller@ipaa.org or 202-857-4722.

Sincerely,



Lee O. Fuller
Executive Vice President

APPENDIX 1

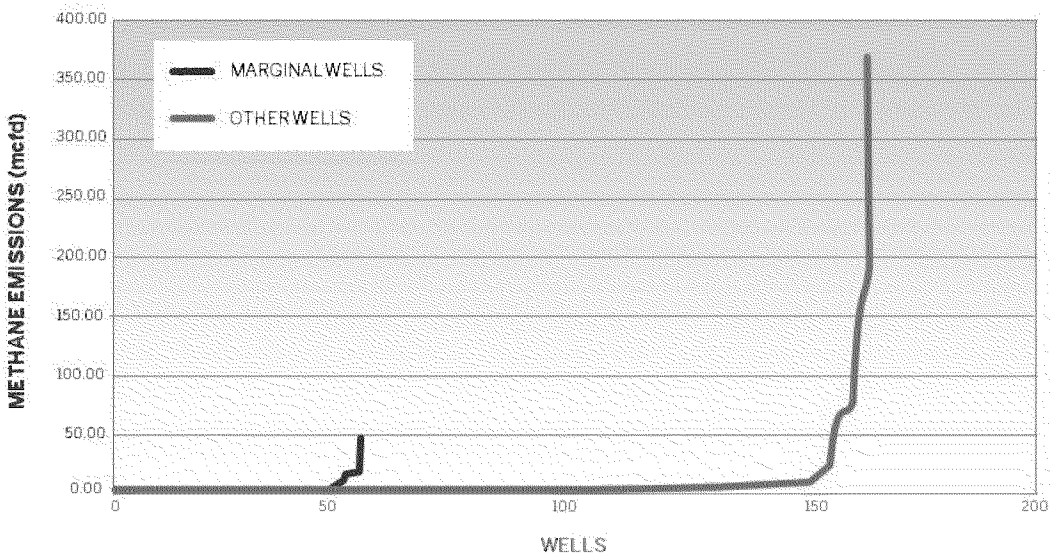
Manipulating Data to Create the Illusion That Low Producing Wells Are "Super-Emitters"

This document addresses data manipulation issues in the environmentalist study submitted to the rulemaking proposal for Subpart OOOOa to distort the role of low producing wells regarding methane emissions. This study was then characterized as the basis for removing the low producing well exclusion for the Subpart OOOOa fugitive emissions program initially proposed by the Environmental Protection Agency (EPA).

Background

Initially, it is important to understand that this study used data from a number of different studies to create its arguments. All of the underlying studies generated their data by driving vehicles with samplers downwind of production sites, hunting for methane plumes. None of them used samples taken on the production site. This creates two issues. First, it measures everything emitted at the site – fugitive emissions and permitted vents. Second, the data are collected over minutes – maybe over an hour – but not over a day. The data in the study are presented as if they were daily emissions but the studies merely scale up hourly estimates. Consequently, an emission that might occur for several hours, but not the full day, would be overstated.

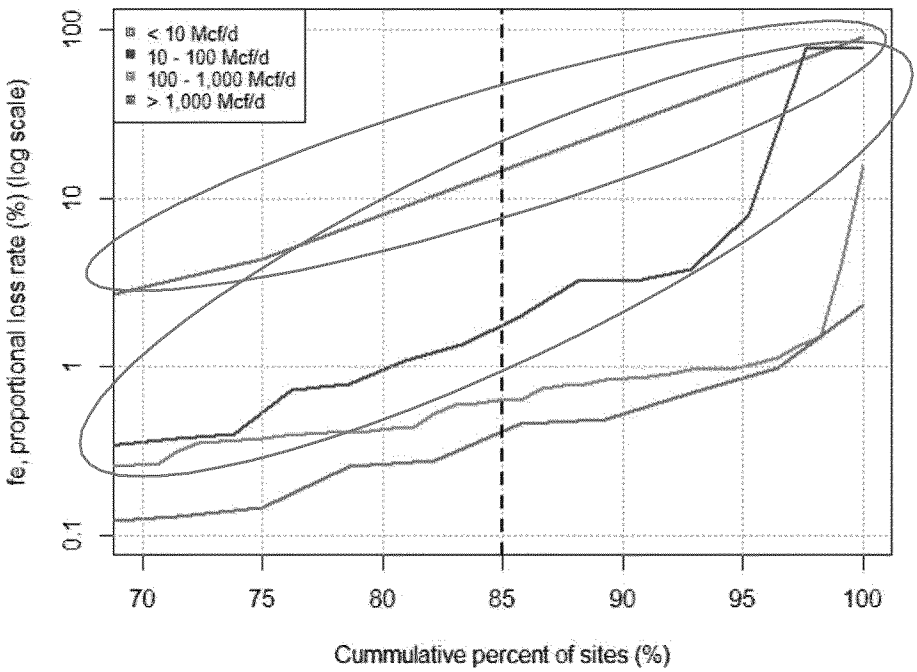
Before turning further to describe the submitted study, it is useful to look at the same data using a direct graph of emissions. In this graph, marginal wells are those with production volumes of 90 mcfd or less.



This graph is consistent with information from other studies showing that a small portion of wells have an emission profile for some reason with high emissions and most wells have really low emissions. Importantly, it also clearly shows that marginal wells – low producing wells in the context of the regulation – have far smaller emissions. But, since this graph is using the same data as the study, it could also be overstating emissions because of scaling short term emissions to a daily amount.

With this background, turning to the presentation of the same material in the study demonstrates how it was manipulated.

Below is the graphic used to present the data. It would suggest that the worst emitting operations – the "super-emitters" – are the smallest wells (the orange line and the blue line, circled in green). Having directly plotted this data, the obvious issue is how such a result can occur.



It is a busy and confusing graph – it's intended to be. The study uses data analysis tricks to create the appearance that marginal wells are "super-emitters".

First, it shows emissions as a percentage of production rather than actual emissions. Thus, one mcf emitted out of ten mcf produced is 10 percent, but 50 mcf emitted out of 1000 mcf produced is 5 percent. As a result, it skews the perception of the data to imply that low producing wells are large emitters when they are not.

Second, its production volumes are really sales volumes, not the amount extracted from the wellhead. Consequently, a "proportional loss rate" of 50 percent would be the calculated loss divided by the volume sold. If the percentage of loss were calculated based on extracted volumes, the 50 percent "proportional loss rate" would drop to 33 percent because the loss would be added to the sales volume to obtain the extracted volume.

Third, it only shows data from the 70th percentile of information. This excludes all of the virtually zero emissions that dominate the data.

Fourth, it uses a logarithmic scale to present the data. One of the reasons to use logarithmic scales is to flatten curves to make them look more like straight lines.

These observations can be made without conducting an intense investigation of the study. They are obviously intended to contort data to create a specific result. Yet, with all the investigative power at EPA, with all of the research work EPA has conducted, EPA took this contrived study at face value to make its determination to remove the low producing well exclusion in the Subpart OOOOa regulations. That decision – particularly void of any opportunity for public review – should not be allowed to stand.

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INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

AXPC American Exploration & Production Council

December 4, 2015

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

VIA ELECTRONIC MAIL

Re: Comments for Three Regulatory Proposals issued September 18, 2015:

1) **Oil and Natural Gas Sector: Emission Standards for New and Modified Sources (80 Fed. Reg. 56,593)**

2) **Release of Draft Control Technique Guidelines for the Oil and Natural Gas Industry (80 Fed. Reg. 56,577)**

3) **Source Determination for Certain Emission Units in the Oil and Natural Gas Sector (80 Fed. Reg. 56,579)**

Dear Administrator McCarthy:

These comments are filed on behalf of the Independent Petroleum Association of America (IPAA) and the American Exploration and Production Council (AXPC) (collectively, IPAA/AXPC).[1]

IPAA represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will most directly be impacted by the U.S. Environmental Protection Agency (EPA) policy decisions to regulate methane directly from the oil and natural gas sector. Independent producers develop about 95 percent of American oil and gas wells, produce 54 percent of American oil, and produce 85 percent of American natural gas. Historically, independent producers have invested over 150 percent of their cash flow back into domestic oil and natural gas development to find and produce more American energy. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy is essential to the national economy.

AXPC is a national trade association representing 30 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 production of oil and natural gas. Moreover, our 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 innovative and

[1] For ease of reference, these comments include an Acronym Index, attached hereto as "Attachment A."

advanced technologies necessary to explore for and produce oil and natural gas, both offshore and onshore, from unconventional sources.

Additionally, they are joined by the American Association of Professional Landmen (AAPL), the Association of Energy Service Companies (AESC), the International Association of Drilling Contractors (IADC), the International Association of Geophysical Contractors (IAGC), the National Stripper Well Association (NSWA), the Petroleum Equipment & Services Association (PESA), the US Oil & Gas Association (USOGA), and the following organizations:

Arkansas Independent Producers and Royalty Owners Association
California Independent Petroleum Association
Coalbed Methane Association of Alabama
Colorado Oil & Gas Association
East Texas Producers & Royalty Owners Association
Eastern Kansas Oil & Gas Association
Florida Independent Petroleum Association
Idaho Petroleum Council
Illinois Oil & Gas Association
Independent Oil & Gas Association of New York
Independent Oil & Gas Association of West Virginia
Independent Oil Producers' Agency
Independent Oil Producers Association Tri-State
Independent Petroleum Association of New Mexico
Indiana Oil & Gas Association
Kansas Independent Oil & Gas Association
Kentucky Oil & Gas Association
Louisiana Oil & Gas Association
Michigan Oil & Gas Association
Mississippi Independent Producers & Royalty Association
Montana Petroleum Association
National Association of Royalty Owners
Nebraska Independent Oil & Gas Association
New Mexico Oil & Gas Association
New York State Oil Producers Association
North Dakota Petroleum Council
Northern Montana Oil and Gas Association
Ohio Oil & Gas Association
Oklahoma Independent Petroleum Association
Panhandle Producers & Royalty Owners Association
Pennsylvania Independent Oil & Gas Association
Permian Basin Petroleum Association
Petroleum Association of Wyoming
Southeastern Ohio Oil & Gas Association
Tennessee Oil & Gas Association
Texas Alliance of Energy Producers

Texas Oil and Gas Association
Texas Independent Producers and Royalty Owners Association
Utah Petroleum Association
Virginia Oil and Gas Association
West Slope Colorado Oil & Gas Association
West Virginia Oil and Natural Gas Association

Collectively, these groups represent the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be most significantly affected by the actions resulting from these regulatory proposals. In addition to the specific comments made herein, we support those comments submitted separately by the participants in these comments. IPAA/AXPC also endorses and supports the comments of the Western Energy Alliance (WEA) and the American Petroleum Institute (API) submitted on the proposed rules referenced above.

As an initial matter, these comments are designed to address the three aforementioned proposed regulatory actions simultaneously and will be submitted to all three dockets as all three proposals target the oil and natural gas industry, and certain responses and arguments from IPAA/AXPC are applicable to all of the proposals. Additionally, comments on all three proposals were initially due November 17, 2015. IPAA requested an extension of the 60-day comment period on October 2, 2015, due to the complexity and breadth of the proposed regulations and that certain key supporting documents were not available in the docket for public review when the EPA published the proposals in the Federal Register on September 18, 2015. In late October/early November various informed parties who had requested additional time to comment learned that they would have until December 4, 2015. On November 13, 2015, the extension was published in the Federal Register.

EXECUTIVE SUMMARY

These comments raise a number of key issues associated with EPA's proposals for Clean Air Act (CAA or Act) New Source Performance Standards (NSPS), Control Technique Guidelines (CTG) and Source Determination for oil and natural gas production facilities.

EPA justifies its proposals in the context of the Administration's Climate Action Plan with a specific target of reducing methane emissions from the oil and natural gas sectors by 40-45 percent during the time period from 2012 through 2025. However, as these comments demonstrate, EPA's proposals are unnecessary, unjustified, poorly developed and counterproductive.

First, the Administration proclaims its intent to reduce methane emissions by 40-45 percent from the oil and natural gas sectors. At the same time, it takes credit for its 2012 volatile organic chemical/methane emissions regulations in these sectors that exceed its own target. Moreover, it fails to recognize that much of the reduction it seeks has occurred since 2012 from voluntary industry actions. The oil and natural gas production sector is 1.07 percent of the national Greenhouse Gas Inventory and its methane emissions will continue to drop because of industry emissions management. Consequently, any justification for additional regulation must

be thoroughly weighed based on cost effectiveness and economic consequences. EPA's proposals fail these tests.

Second, within the NSPS proposal, the most egregious element is the proposed fugitive emissions regulations that are based on purely speculative emissions reductions but, as designed, are excessively and unnecessarily burdensome. Oil and natural gas production fugitive emissions management is an emerging arena with companies and state regulatory programs still learning how best to efficiently and effectively control them. Several states are currently implementing programs; none of which parallel EPA's proposals. Experience with those state efforts demonstrates that emissions patterns result from a few high emissions sources that can be managed quickly with sustained reductions. EPA's proposal to lock in an unworkable program for at least 5 years is arbitrary and inappropriate. EPA should await the analysis of state programs to determine whether an NSPS is logical or necessary.

Third, EPA also proposed a volatile organic compound (VOC) CTG for Ozone nonattainment areas. This proposal fails to comply with the Agency's fundamental responsibility of developing Reasonably Available Control Technology (RACT). Instead, EPA largely transposes the same requirements in the 2012 NSPS and those proposed in this regulatory action from new sources to existing ones. In doing so, EPA fails to determine whether these new facility requirements are economically appropriate as CTG for existing sources on a national basis.

Fourth, by linking its CTG proposal to its Climate Action Plan, EPA fails to address the need for the CTG with regard to Ozone nonattainment. Yet, the threshold question for these regulations is whether they are necessary and appropriate for attainment of the Ozone National Ambient Air Quality Standards (NAAQS). If fact, based on EPA's analysis of the regulatory framework to attain the recently revised Ozone NAAQS, EPA demonstrates the CTG are wholly unnecessary. Prior to proposing these CTG, EPA concluded that all but a few areas of the country will meet the new Ozone NAAQS by 2025 using national, federal regulatory requirements. Consequently, for these areas, the proposed CTG are excessive regulations. For the remaining enduring Ozone nonattainment areas, if there are oil and natural gas production operations that need to be addressed, they can be managed through local determinations of Reasonably Available Control Measures (RACM) and do not require CTG.

Fifth, because these CTG are unnecessary, their likely impact will be the inappropriate restriction of economic growth in Ozone nonattainment areas. Given that EPA has concluded that Ozone NAAQS attainment will be achieved without these CTG, these CTG will remove emissions that could be used as CAA required new source offsets. Therefore, they would unnecessarily impede economic growth that would otherwise occur.

Sixth, in its proposal to address Source Determination for oil and natural gas production facilities, EPA should recognize that new facilities should be based on a narrow definition that hones closely to the approach EPA has used under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program. Where there are issues regarding scope, the source determination should be based on the sites being contiguous in addition to sharing the same Standard Industrial Classification (SIC) Code and being under common control.

These comments will expand on the issues raised above and other more specific ones. Ultimately, however, IPAA/AXPC argues that EPA's NSPS and CTG proposals must be withdrawn, reconsidered and revised to be consistent with the Administration's own Climate Action Plan objectives and its assessment of the capability of the nation to meet the revised Ozone NAAQS. To do otherwise would arbitrarily impose excessive regulation on the oil and natural gas setoff for no purpose other than to expand the already burdensome federal regulatory program.

I. EPA's Additional New Source Performance Standards for the Exploration and Production Segment and Control Technique Guidelines for Existing Sources are Unnecessary and Misplaced.

EPA's proposed NSPS targeting methane emissions from the exploration and production segment of the oil and natural gas sector are unnecessary, unwarranted, and wasteful – not only to those subject to the regulations but to the state and federal regulators who must implement the rules if EPA does not change its course. Similarly, proposing essentially the same set of controls on existing sources in nonattainment areas (and ozone transport regions) using the proposed CTG with no additional economic justification/cost-benefit analysis is one more indication that EPA is rushing to judgment with its latest salvo of regulations. In April 2014, EPA acknowledged the lack of knowledge to regulate a variety of sources and implemented a White Paper process that sought additional technical information on a variety of sources.[2] Industry raised numerous concerns regarding EPA's lack of data regarding emissions from these sources and the cost/effectiveness of controls from these sources. Nonetheless, EPA proceeded headlong to promulgate its methane NSPS – relying heavily on the Regulatory Impact Analysis (RIA) from the VOC NSPS promulgated in 2012. The methane regulations need to "stand on their own" and be justified on their own, not simply as an "add-on" to the VOC NSPS.

These regulations will have a serious negative economic impact on American oil and natural gas production while providing marginal environmental benefit beyond the regulations EPA promulgated in 2012 to regulate VOCs from essentially the same set of production and exploration emission sources.[3] To understand the full impact, it is essential to put the entire issue in perspective.

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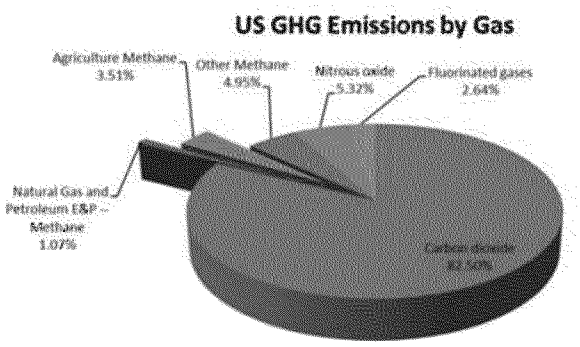
[2] U.S. Environmental Protection Agency, Section on Oil and Natural Gas Air Pollution Standards, *Methane*, *available at* http://www3.epa.gov/airquality/oilandgas/methane.html.

[3] Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 77 Fed. Reg. 49,490 (Aug. 16, 2012).

From 2008 through 2013, U.S. shale gas production grew 400 percent,[4] while methane emissions have declined 13.3 percent. According to 2013 EPA Greenhouse Gas (GHG) Reporting data, methane emissions from oil and natural gas exploration and production are 1.07 percent of total U.S. GHG emissions. Further reductions will occur because of "green" or "reduced emission completions" that are being phased-in through the 2012 regulations.[5] According to EPA's latest GHG Reporting Program: "[In 2013] reported methane emissions from petroleum and natural gas systems sector have decreased by 12 percent since 2011, with the largest reductions coming from hydraulically fractured natural gas wells, which have decreased by 73 percent during that period. EPA expects to see further emission reductions as the agency's 2012 standards for the oil and gas industry become fully implemented."[6] These reductions are remarkable, given that a major component of the 2012 standards, the reduced emission completion requirements, only became effective January 1, 2015.



In January 2015, the Administration announced its intent to initiate rulemaking to further reduce methane emissions from oil and natural gas systems, including the production sector.[7] Specifically, it announced a target of a 40-45 percent reduction in 2012 emissions by 2025. For the production and exploration segment of the oil and natural gas sector, additional regulations are unnecessary. As the Administration observed in its announcement:

> In 2012, the Environmental Protection Agency (EPA) laid a foundation for further action when it issued standards for volatile organic compounds (VOC) from the oil and natural gas industry. These standards, when fully implemented, are expected to reduce 190,000 to 290,000 tons of VOC and decrease methane

[4] U.S. Energy Information Administration, *available at* http://www.eia.gov/dnav/ng/hist/res_epg0_r5302_nus_bcfa.htm.

[5] In 2012, EPA finalized a Clean Air Act (CAA or Act)Section 111(b) NSPStargeting VOCs emissions from hydraulicallyfractured natural gas wells. This rulemaking also reduces methaneemissions as co-benefit. Methane and VOCs are emitted from oil and natural gas production facilities at thesametime from the same equipment. Consequently,reducing one also reducesthe other. The effects of the 2012 NSPS are still unfolding.

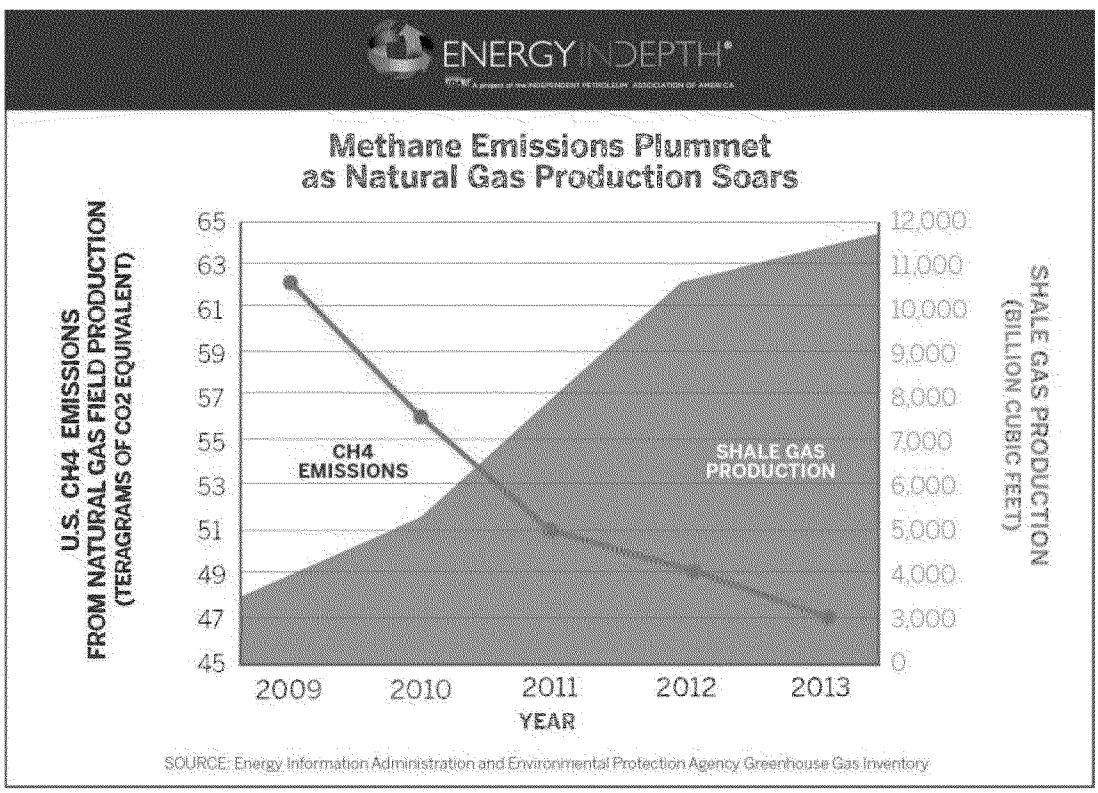
[6] Requirements for reduced emission completions on natural gas wells were promulgated in August 2012 but did not become effective until January 1, 2015. Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards, 79 Fed. Reg. 79,018 (Dec. 31, 2014) (codified at 40 C.F.R. pt. 60).

[7] Press Release, The White House, Fact Sheet: Administration Takes Steps Forward on Climate Action Plan by Announcing Actions to Cut Methane Emissions (Jan. 14, 2015), *available at* https://www.whitehouse.gov/the-press-office/2015/01/14/fact-sheet-administration-takes-steps-forward-climate-action-plan-anno-1.

> emissions in an amount equivalent to 33 million tons of carbon pollution per year.[8]

Over 99 percent of the EPA projected reductions occur from the exploration and production sector. In 2013, exploration and production emissions of methane were 71 million tons of CO_2 equivalent. Consequently, by EPA's own numbers, the 2012 NSPS regulations will reduce emissions by 46 percent. This reduction exceeds the emissions target percentage of the production sector of the oil and natural gas industry.

EPA attempts to argue that its regulations are needed because methane emissions "are projected to increase by about 25 percent over the next decade if additional steps are not taken to reduce emissions from this rapidly growing industry."[9] Yet, this statement is wholly inconsistent with the experience over the past several years in the exploration and production sector of the industry. This segment has demonstrated that growth in production not only provides more clean-burning, GHG-reducing product, it has been done while reducing methane emissions as the following graphic shows:



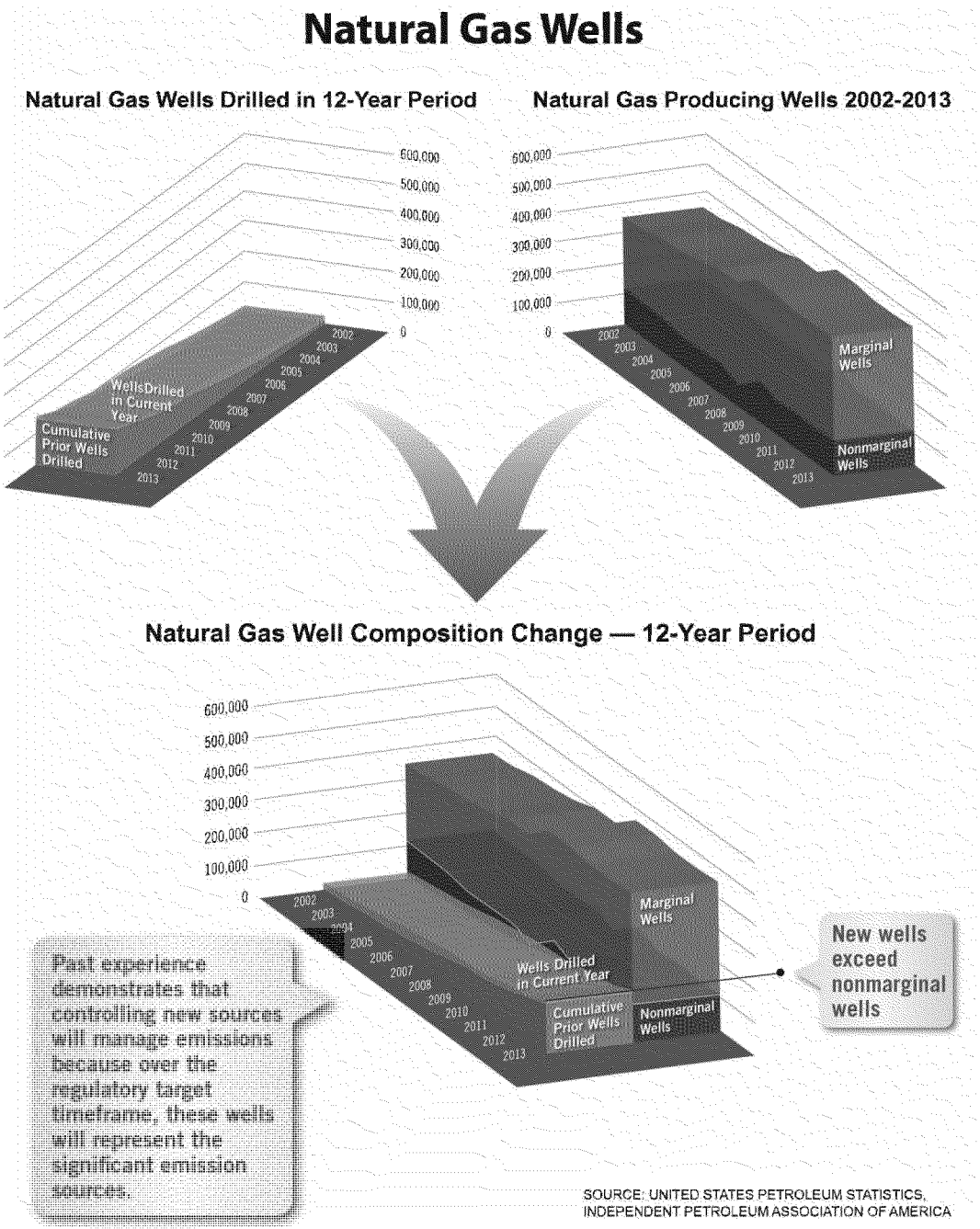
[8] *Id.*

[9] U.S. Environmental Protection Agency, Fact Sheet: EPA's Strategy for Reducing Methane and Ozone-Forming Pollution from the Oil and Natural Gas Industry (Jan. 14, 2015), *available at* https://www.whitehouse.gov/the-press-office/2015/01/14/fact-sheet-administration-takes-steps-forward-climate-action-plan-anno-1.

Significantly, these reductions in methane emissions have occurred prior to full implementation of the 2012 NSPS.

Moreover, because of the nature of oil and natural gas production, the application of controls on new sources will achieve the Administration's objectives without the need to create extensive existing source regulations. Oil and natural gas production operations differ from other types of manufacturing. After the period of initial production, wells begin to decline – generally referred to as the "production decline curve." And as the production of the well declines, its ability to emit VOCs and methane into the atmosphere also declines. Emissions from these older wells will be a smaller portion of the 1.07 percent of emissions, yet EPA's decision to regulate methane directly under Section 111(b) of the CAA and proposed CTG subjects tens of thousands of existing wells to regulation. IPAA/AXPC questions the cost-effectiveness of the proposed requirements to existing sources. The regulatory burden on state and federal regulators of exposing hundreds of thousands of existing sources is completely overlooked in EPA's proposal.

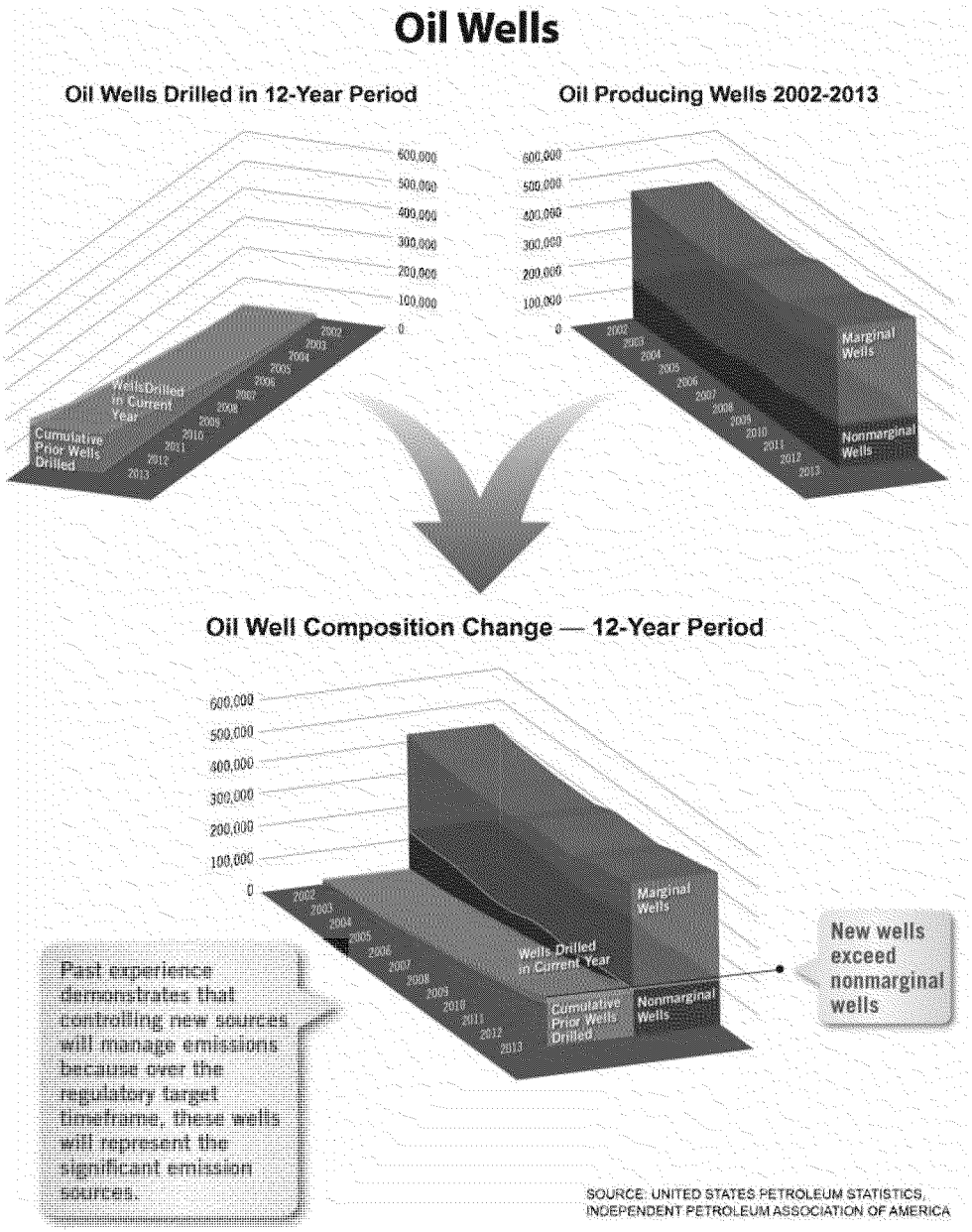
The declining nature of oil and natural gas wells also differentiates the exploration and production segment of the oil and natural gas sector from other segments further downstream where emissions remain fairly constant overtime. Ultimately, the production from the "new" wells declines to the point where they become "marginal" wells. These are defined as wells that produce 15 barrels/day of oil or less and 90 mscf/d or less of natural gas. Currently, there are over 1.1 million oil and natural gas wells in the United States; approximately 760,000 are marginal wells. However, these small individual wells account for about 20 percent of U.S. oil production and 13 percent of its natural gas production. Consequently, unlike manufacturing facilities where new facilities do not replace existing ones, in the oil and natural gas production industry, the implementation of technology on new wells will rapidly result in its application across the breadth of the industry as new wells become the predominant source of emissions for the industry. This can be understood by looking at past experience as shown in the graphs below:



As this graphic demonstrates, after 12 years wells subject to the new source regulatory requirements will dominate the production of natural gas, and the remaining wells will be marginal wells with minimal incremental emissions beyond the emissions from sources already subject to regulation. The cost associated with reducing those incremental emissions will be greater than the cost of implementing controls on new or modified sources and will likely make many of the marginal wells uneconomic, causing them to be shut in/abandoned. The opportunity

cost or value of that last production is not offset by the minimal emissions reductions achieved by regulating existing sources.

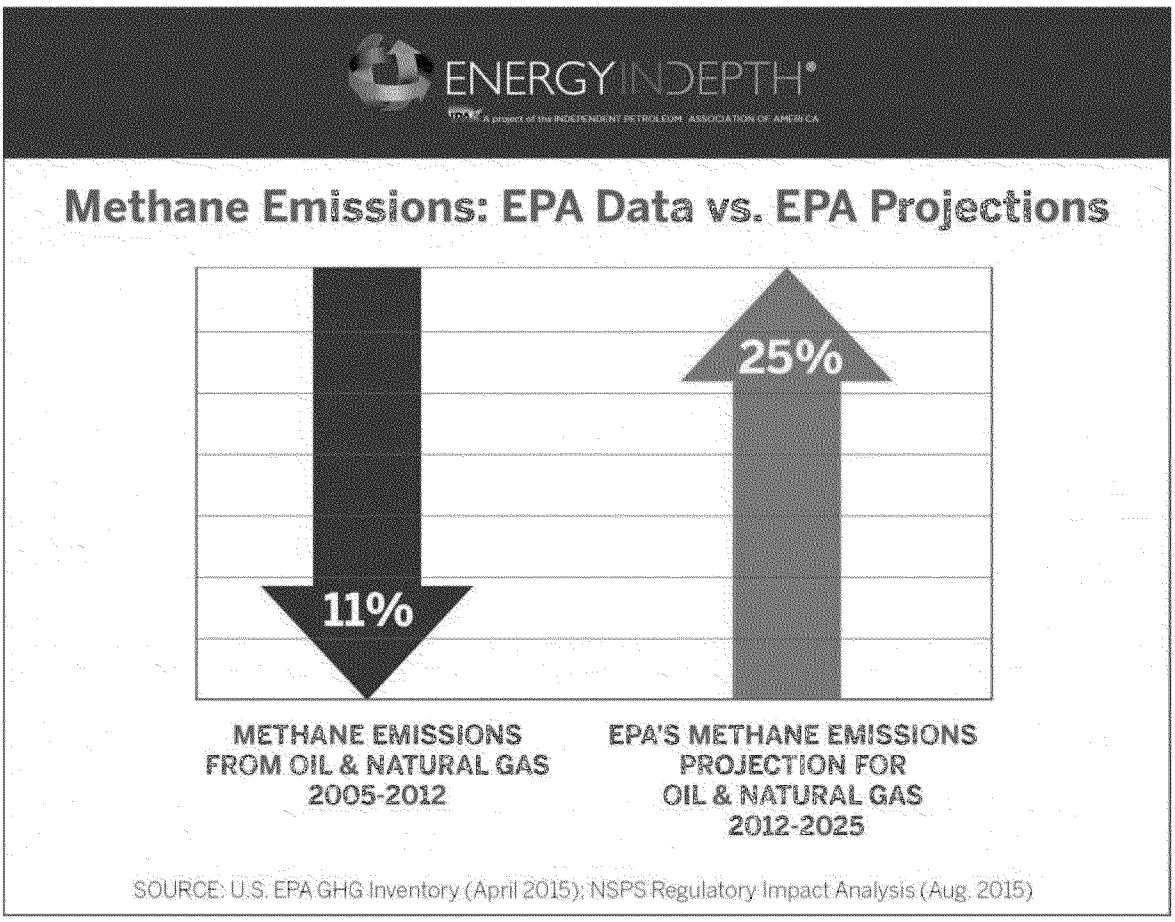
A similar pattern exists for oil wells as shown below:



While this analysis is based on past experience, if it were expanded to a 20-year period, it would show a similar trend and demonstrate that the use of new source regulations are more than adequate to address the Administration's interest in reducing methane emissions from the oil and natural gas sector, in general, and the exploration and production segment, in particular. EPA

has failed to adequately account for and justify subjecting existing exploration and production sources to regulation under Section 111 of the CAA or through the CTG.

As Energy In Depth (a research, education, and public outreach campaign supported by IPAA) recently reported, EPA's assumptions regarding methane emissions from the oil and natural gas industry are not supported by EPA's own data.

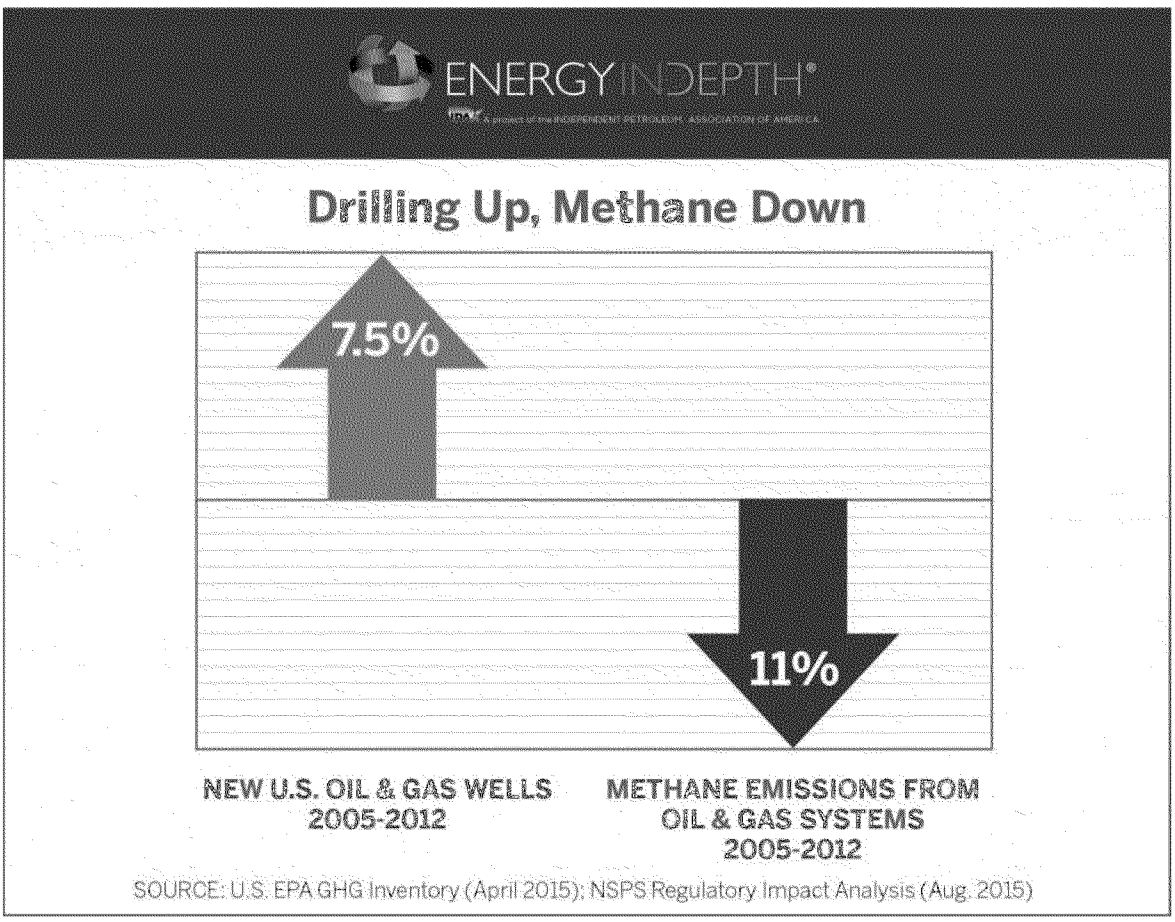


More specifically, Energy In Depth found:

- EPA projects methane emissions from the oil and natural gas sector will increase over the next decade, but **methane emissions from that sector have declined by more than 22 million metric tons** since 2005.
- Over the past decade, the United States added more than 86,000 new wells, during which **methane emissions from petroleum and natural gas systems fell by 11 percent**.
- EPA's flawed assumptions on methane emissions raise questions about the agency's cost-benefit calculation, and EPA could be **underestimating engineering costs by more than $10 million**.

- The EPA could also be **overstating the climate benefits of the rule**, since methane emissions may be significantly lower than EPA's projections.[10]

As discussed below, EPA's economic justification for it proposed regulations is problematic. But even the past does not support EPA's fundamental assumption that more drilling means more emissions:



EPA has projected that an increase in oil and natural gas activity will result in a 25 percent increase in methane emissions. But since 2005, methane emissions from U.S. oil and natural gas systems have fallen by a greater percentage than the number of new wells drilled.

IPAA/AXPC has repeatedly told EPA that additional regulation is not needed. Market forces drive the industry to minimize emissions. Unlike certain "products" in other industries with "emissions" that are a by-product or negative externality associated with the production, the "emission" of concern to EPA is the very product this industry brings to the market.

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[10] Steve Everley, *New EPA Methane Regulations Based on Flawed Emissions Assumptions* (2015), Energy in Depth, *available at* http://energyindepth.org/national/epa-methane-regulations-flawed-emissions-assumptions/. IPAA/AXPC incorporate by reference the entire Energy In Depth article as part of its comments.

II. The Industry's Recent Past is Not Its Prologue – Therefore EPA's Proposed Regulations are Not Justified

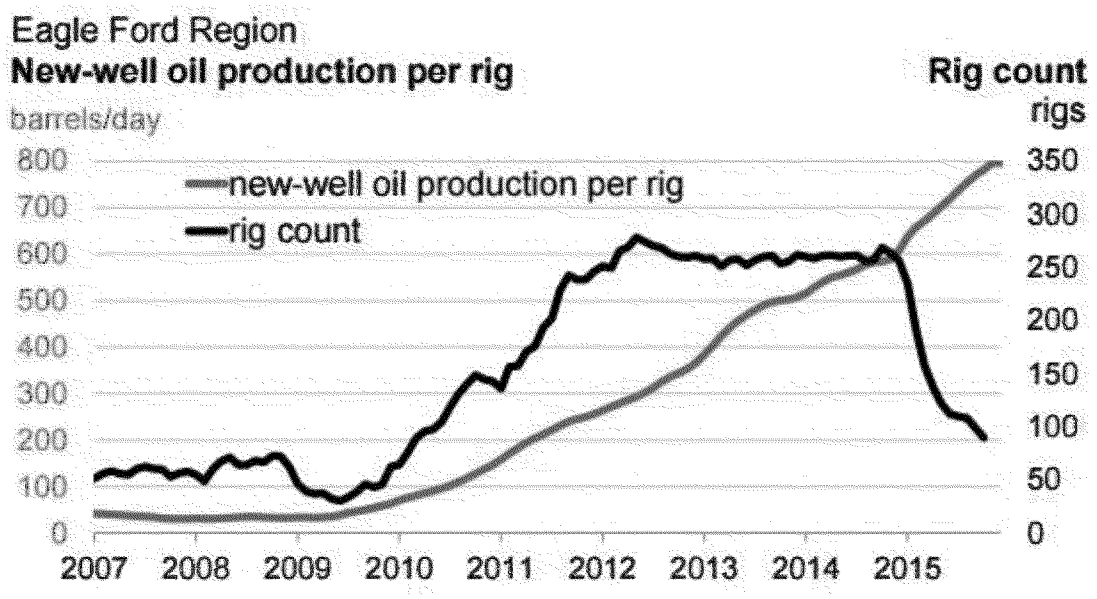
EPA justifies its proposed regulations in large part on the last 10 years of growth in the American oil and natural gas industry – perhaps the most dynamic and rapid growth period in the history of the industry:

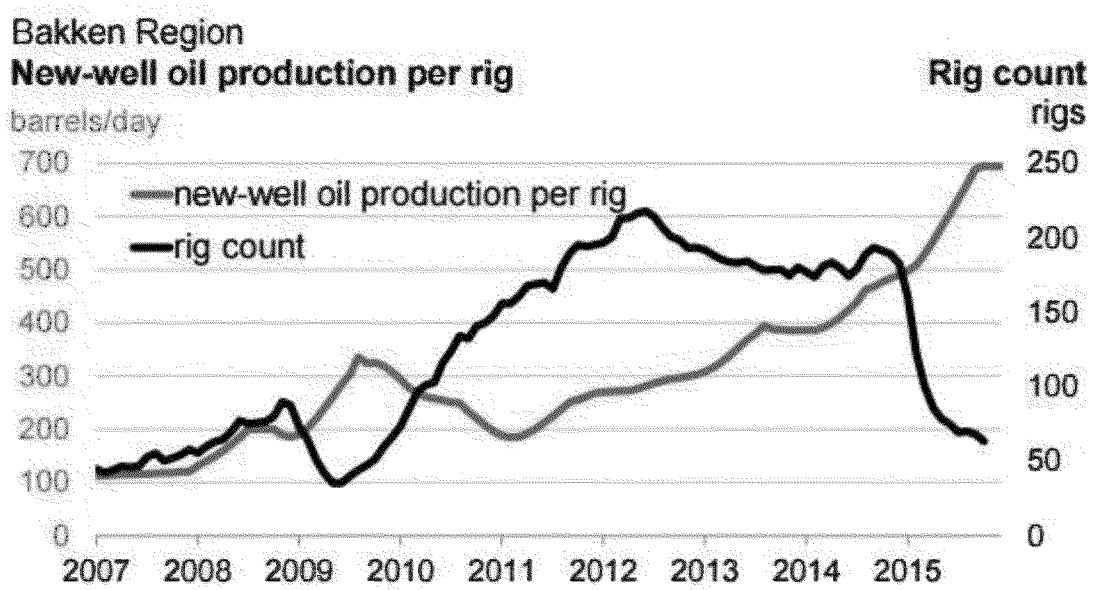
> The EPA has projected affected facilities using a combination of historical data from the U.S. GHG Inventory, and projected activity levels, taken from the Energy Information Administration (EIA's) Annual Energy Outlook (AEO). The EPA derived typical counts for new compressors, pneumatic controllers, and pneumatic pumps by averaging the year-to-year increases over the past ten years in the Inventory. New and modified hydraulically fractured oil well completions and well sites are based on projections and growth rates consistent with the drilling activity in the 2014 Annual Energy Outlook."[11]

As much as the oil and natural gas sector would like to see that growth rate continue to 2025, it simply will not happen, and the past few years illustrate the cyclical nature of the industry. The price of oil and natural gas has plummeted unlike EPA's hypothetical projections. Operators react quickly to market forces and in many shale plays very few wells are being drilled. For many small, independent operators in various plays, they have not drilled a well in 3 or more years – yet EPA is justifying the cost of the proposed regulations on the most rapid expansion in the history of the industry. The following charts from a recent article by Energy In Depth,[12] based on EIA data, clearly illustrate the impact of market forces:

[11] Regulatory Impact Analysis of the Proposed Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector, EPA-452/R-15-002 (Aug. 2015) at 3-9.

[12] Steve Everley, *New EPA Methane Regulations Based on Flawed Emissions Assumptions* (2015), Energy in Depth, *available at* http://energyindepth.org/national/epa-methane-regulations-flawed-emissions-assumptions/.





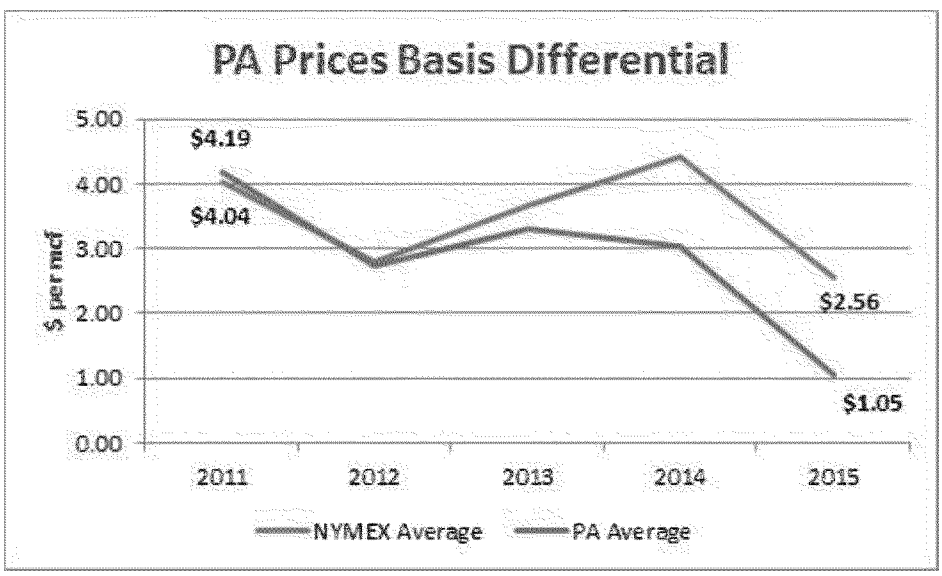
SOURCE: U.S. Energy Information Administration

EPA's cost-effectiveness analysis of the proposed regulations "applies the monetary value of the saved natural gas as an offset to the" cost of the proposed controls.[13] EPA then valued 1,000 standard cubic feet (Mcf) of natural gas at $4.00 for the RIA/cost-effectiveness analysis. The $4/Mcf assumption was based on EIA's 2014 Annual Energy Outlook forecasted

[13] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,617(Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60).

wellhead prices for the lower 48 states in 2020 ($4.46) and in 2025 ($5.06). EPA considered the $4/Mcf to be "conservative"[14] – presumably because of the predicted value of natural gas in 2020 and 2025. There are numerous problems with EPA assumptions. First, the New York Mercantile Exchange (NYMEX) settlement price for natural gas in October 2015 was $2.56 – 36% lower than EPA's assumed value. EPA has repeatedly indicated that it will finalize the proposed methane NSPS by the summer of 2016, and no financial institution is predicting a dramatic increase in natural gas prices between now and then. For those subject to regulations that come into effect within the next year, EPA's "conservative" estimate of $4/Mcf based on government estimates of what natural gas will cost in 2020 and 2025 is meaningless. IPAA/AXPC appreciates that the "benefit" or value of the natural gas saved by the proposed regulations occurs over the life of the well; however, the emissions from any well are heavily "front-loaded" – with the greatest production, and thus potential emissions, occurring the first few years of the well's life – long before 2020 or 2025. Smaller independents, many conventional well operators, and operators of wells that are marginally economical will not be able to weather the storm until natural gas reaches EPA's conservative value of $4/Mcf. Wells will not be drilled or will be shut in prematurely, and other companies will simply go out of business because of EPA's erroneous assumption on the price of natural gas. EPA's cost-effectiveness analysis for all proposed controls should be based on a price of natural gas that: a) more accurately reflects the price of natural gas when controls will need to be implemented, and b) accounts for the "front loading" of emissions when the price of natural gas is much lower than the $4/Mcf assumed by EPA.

EPA's assumption of $4/Mcf natural gas also fails to acknowledge or account for significant regional differences in the price of natural gas. A review of the wellhead price of natural gas in Pennsylvania provides but one of the many dramatic price variations.



[14] *Id.*

The chart above tracks the PA Price versus NYMEX average prices for the past 4 years and is current through October 2015. The "PA Price" is based on a weighted average of the Dominion South, Leidy, and Tennessee Zone 4 prices reported by Platt's *Inside FERC*. The separation of prices in Pennsylvania from the national index price is driven in large part by the lack of takeaway pipeline capacity and sheer volume of natural gas. The regional variation in price is not accounted for in EPA's cost-effectiveness analysis. Consequently EPA's inflated valuation of the price of natural gas will disproportionally impact certain regions of the country where local or regional factors result in prices that are significantly lower than the national average. EPA's cost-effectiveness analysis must take such significant regional price fluctuations into consideration when evaluating control options.

EPA is proposing regulations so fast that even it cannot keep up with the changing assumptions. Part of EPA's assumption of $4/Mcf natural gas was based on EPA's proposed Clean Power Plan.[15] However, EPA's final Clean Power Plan changed its "assumptions," and EPA now "believes" renewables will play a greater role in the country's future energy mix and natural gas prices may not reach $4/Mcf until after 2030 – well beyond the EPA's analysis for the proposed methane NSPS which ends in 2025. As Energy In Depth points out, the changing assumptions have a dramatic impact on the industry:

> According to EPA data compiled by the American Wind Energy Association (AWEA), a heavier reliance on renewables could result in natural gas prices that are at least 12 percent lower than what would be expected under EPA's base case projection [for the Clean Power Plan]. EPA also acknowledges in its RIA that a $1/Mcf change in price of natural gas translates to as much as a $19 million difference in its cost estimate. In other words, if natural gas prices averaged $3/Mcf instead of $4/Mcf, EPA could be overestimating revenue by roughly 24 percent. Based on the current 2012-2015 average natural gas spot price of $3.44/Mcf, EPA would be overestimating revenue by about $10.6 million. Under the "high renewables" scenario in the Clean Power Plan, which would depress natural gas prices even further, EPA's overestimate would be even higher.
>
> The additional costs could be devastating for an industry already suffering from a market downturn in commodity prices. An analysis by Oppenheimer & Co., for example, already found that EPA's methane rule could wipe out smaller drillers across the United States.[16]

In addition to failing to account for the changed assumptions for the price of oil and natural gas as a result of the Clean Power Plan, EPA has made no effort to account for the impact associated with proposed Ozone NAAQS. For EPA to evaluate the proposed impact of the proposed methane NSPS in a vacuum, ignoring its own significant regulatory initiatives that will have serious impacts on the price of oil and natural gas, as well as the number of entities that will be

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[15] Steve Everley, *New EPA Methane Regulations Based on Flawed Emissions Assumptions* (2015), Energy in Depth, *available at* http://energyindepth.org/national/epa-methane-regulations-flawed-emissions-assumptions/.

[16] *Id.*

subject to controls, is arbitrary and capricious. Every mutual fund and investment opportunity contains the standard disclaimer along the lines of – "past performance cannot guarantee future results." The oil and natural gas industry is no different – even without EPA impacting market forces with multiple regulatory disruptions.

III. Now is Not the Time to Introduce a New Model to Justify EPA's Proposed Rules.

The benefits of the proposed rule are estimated using the social cost of methane (SC-CH_4), which has been derived from the approach the United States Government (USG) uses for estimating the social cost of carbon (SCC). However, unlike the USG's SCC which has undergone formal public comment and review, EPA's selected value for SC-CH_4 in this proposed rulemaking is arbitrarily taken from one scientific report[17] that attempts to find an equivalent SC-CH_4 from the SCC, and for which EPA only requested a "peer review" not formal public review and comment. The "peer review" was only concluded in 2014 and discussed as the basis for EPA's cost-effectiveness analysis for the first time in the RIA.[18] The model has not been evaluated by Office of Management and Budget. Providing industry a mere 60 days (plus 17) to evaluate and comment on what amounts to "new math" is inadequate. Also, the selected value of SC-CH_4 used for the Benefit-Cost Analysis in the RIA is based on an arbitrarily selected discount rate of 3 percent, which also was not proposed for public review and comment before being used to justify this proposed rulemaking.[19] Even though now EPA belatedly "seeks comments on the use of these directly modeled estimates, from the peer reviewed literature, for the social cost of non-CO_2 GHGs . . .,"[20] such a request, after EPA has already used its arbitrary value for SC-CH_4 to justify methane emissions controls on numerous methane emissions sources, is arbitrary and capricious. The only proper and legal way for EPA to apply a SC-CH_4 value to methane emissions reductions for proposed rulemakings is to publish a proposal for a SC-CH_4 value (based on scientific evidence and its arguments for a certain discount rate), take public comments on that proposed value, and finalize the value for future rulemakings. Otherwise, EPA can arbitrarily use one value of SC-CH_4 to justify controls on methane emissions from one industrial sector source and then turn-around later and use some other arbitrary value for another industrial sector source, all presumably justified by taking comment on the arbitrary value already used to justify the proposed regulations.

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[17] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,655 (Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60).

[18] Regulatory Impact Analysis of the Proposed Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector, EPA-452/R-15-002 (Aug. 2015).

[19] Exacerbating the arbitrary nature of the 3% discount rate for benefits, EPA inconsistently and inappropriately selected a 7% discount rate for the cost to industry. EPA's unjustified use of different discount rates arbitrarily and capriciously overstates the benefits compared to the costs.

[20] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,656 (Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60).

IV. Overarching Comments Particular to the Proposed NSPS for Methane, Subpart OOOOa.

In Sections V and VI of the preamble to the proposed NSPS, EPA dedicates considerable verbiage attempting to justify the need and its legal authority to regulate methane from sources in the oil and natural gas sector. IPAA/AXPC disagrees with both the need and EPA's authority to regulate methane for the reasons set forth below.

EPA's interest in regulating methane is clearly a political decision rather than an environmentally driven decision. Its genesis can be easily seen in the strident demands from anti-fossil energy groups with agendas not to manage industrial emissions but to prevent the development of oil and natural gas. Groups like the Sierra Club have policies that are clear:

> There are no "clean" fossil fuels. The Sierra Club is committed to eliminating the use of fossil fuels, including coal, natural gas and oil, as soon as possible . . . Methane released via extraction and transport is 86 times more potent as a greenhouse gas than CO_2 over a 20-year time frame. The climate-disruption impacts from methane and carbon dioxide emitted by extraction, transport and burning clearly point to the urgent need of keeping fossil fuels in the ground.[21]

This group, along with others, made their demands known to the EPA in multiple meetings and letters, including a December 2013 letter stating the following:

> We commend EPA for updating its VOCs performance standards for this industry in 2012, but the job is far from finished. While some reductions in methane emissions will be achieved as a co-benefit of these 2012 rules, many emission sources are not adequately addressed, such as the vast network of equipment that was installed before those rules went into effect. EPA needs to take immediate steps to produce regulations to directly reduce methane pollution from new and existing equipment from this industry.[22]

Once demanded, the issue of direct methane regulation became the pivot point for development of the current regulatory proposals. As discussed below, the drive for direct methane regulations for the oil and natural gas sector is driven by atmospherics and philosophy, not science or increased environmental benefit.

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[21] *Sierra Club to Big Oil: There are no 'clean' fossil fuels*. Sierra Club (Apr. 21, 2015) *available at* http://angeles.sierraclub.org/news/blog/2015/04/sierra_club_big_oil_there_are_no_clean_fossil_fuels.

[22] Earthworks, *et al*. Interior Secretary Jewell, EPA Administrator McCarty to Curb Methane Emissions from Oil and Gas Industry, Earthworks (Dec. 5, 2013) *available at* https://www.earthworksaction.org/library/detail/open_letter_to_interior_secretary_jewell_epa_administrator_mccarthy_to_curb#.VmHY97Eo74Y.

In reality, EPA was forced to propose regulations to satisfy a political agenda that is governed more by what "we [EPA] believe that the industry can bear . . . and survive."[23] EPA's decision to promulgate methane standards from the exploration and production segment of the oil and natural gas sector is arbitrary and capricious. EPA states that it "believe[s] it is important to regulate methane from the oil and gas sources already regulated for VOC emissions to provide more consistency across the category . . . ."[24] Yet in the very same sentence EPA admits "that the best system of emission reductions (BSER) for methane for all these sources is the same as the BSER for VOC."[25] EPA continues that the BSER for the previously unregulated sources is the same for VOCs and methane. Simply put, the controls on the targeted emissions sources to reduce VOCs are the same as the controls to reduce methane – no more, no less. The "gain" – according to EPA – of adding yet another Subpart of regulations to the already extensive 40 C.F.R Part 60 is "consistency." What EPA chooses to ignore in its preamble discussion is the inevitable "loss" or cost to the industry associated with the regulation of existing sources under Section 111(d).

EPA is silent as to its "beliefs" on whether the industry can "survive" the cost and burden of regulation of existing sources under Section 111(d). This silence is notable and troubling. Clearly, since EPA demonstrates that the technologies used to regulate methane emissions are identical to those for VOC emissions, EPA's choice to expand its regulations to directly regulate methane can only be interpreted as opening a potential pathway to Section 111(d) regulations as the anti-fossil energy organizations demanded. And, while EPA fails to even mention Section 111(d), it must certainly know – based on the demand that existing methane sources must be regulated – that it will face efforts to force such regulation. EPA will surely respond that it will conduct the necessary cost-benefit analysis when it is "forced" to promulgate existing source standards under Section 111(d). Without debating the legalities as to EPA's duties under Section 111(d), this Administration has demonstrated time and time again its propensity to feign resistance to non-governmental organizations' (NGO) "demands" and enter into consent decrees with unreasonable short time periods to promulgate regulations. The irony is that EPA's rationale assumes that the underlying Section 111(b) regulations were necessary in the first place. What has the environment gained (above the benefits gained from VOCs) from regulating methane emissions from exploration and production directly? Nothing. EPA has admitted it. The controls are the same – equally efficient at controlling VOCs and methane. The cost? EPA relies heavily on its original cost-effectiveness analysis for the Subpart OOOO VOC regulations finalized in 2012 and engages in additional analysis discussed in Section VIII of the preamble, concluding that the proposed controls "for methane" are also cost-effective. But nowhere does EPA take into account the cost to the industry associated with the regulations that will likely be forced upon existing sources in this source category. Despite all of the complicated calculations and analyses, the simple fact remains that the controls for VOCs and methane from the targeted sources are the same. There is no demonstrated "need" or unique benefit associated with an additional set of standards specifically for methane. The true cost of the proposed methane

[23] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,629 (Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60)

[24] *Id.* at 56,595.

[25] *Id.*

regulations is incomplete and unknown without considering the cost associated with regulating existing sources under Section 111(d).

"Consistency across the category" is an insufficient justification. Historically, EPA has tailored new source performance standards to subcategories or segments within a larger, overarching category. One needs to look no farther than Subpart D and its progeny for Steam Generating Units or Subpart E for Municipal Waste Combustors. EPA has shown it can be very creative in tailoring requirements to subcategories or segments within a listed category. Since the Administration first hinted at regulating methane directly from the exploration and production segment, IPAA/AXPC has advocated that such direct regulation was unnecessary, as the controls for VOCs were exactly the same as for methane. EPA acknowledged as much in Section VII in the preamble and stated "[w]e anticipate that these stakeholders will express their views during the comment period."[26] IPAA/AXPC questions the appropriateness of EPA's decision to essentially ignore a central premise of two federal trade associations that represent approximately 54% of oil and 85% of natural gas exploration and production capacity of this country. Is it appropriate for IPAA/AXPC to guess as to EPA's reasoning and justification? Much of EPA's 67-page preamble is dedicated to justifying its legal basis for regulating methane directly and the cost-effectiveness of the proposed controls. It fails to address in any meaningful way why it is necessary or justified to promulgate methane standards from the exploration and production segment. EPA's justification boils down to: 1) EPA assumes it is has the legal authority to do so; 2) EPA has placed a high value on "consistency" within the source category; and 3) EPA "believes" the industry can "survive." EPA is on much stronger legal footing addressing segments or subcategories differently within the oil and natural gas sector than asserting it does not need a separate endangerment finding for methane. EPA's insistence, without explanation, on promulgating methane standards for exploration and production sources, when the controls are exactly the same, needlessly increases the regulatory burden on everyone – the regulated and the regulator. IPAA/AXPC should not have to guess until the rule is finalized and potentially litigate an issue that has been clearly articulated to EPA, the Small Business Administration, and the Office of Management and Budget long before the rule was even proposed.

In Section V and VI, EPA indicates it is responding to and granting a Petition for Reconsideration associated with the 2012 NSPS Subpart OOOO for VOCs which requested the promulgation of NSPS for methane. The key elements outlined as EPA's reasoning for granting reconsideration are:

- "the wealth of additional information now available to us . . ."[27]
- "[t]he oil and natural gas industry is one of the largest emitters of methane, a GHG with a global warming potential more than 25 times greater than that of carbon dioxide."[28]

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[26] *Id.* at 56,609.

[27] *Id.* at 56,599.

[28] *Id.*

- "because the EPA is not listing a new source category in this rule, the EPA is not required to make a new endangerment finding with regard to oil and natural gas source category in order to establish standards of performance for the methane from those sources."[29]
- "a number of major scientific assessments have been released that improve understanding of the climate system and strengthen the case that GHGs endanger public health and welfare for current and future generations."[30]

EPA then dedicates approximately 10 pages of the preamble to defending their position that a separate endangerment finding strictly for methane is not needed (and backfilling in case they are wrong), making the case for global climate change from GHGs, and presenting various charts on U.S. methane emissions. Unlike the remaining sections of the preamble (approximately 55 pages), in which EPA seeks specific comments on particular issues at least 50 different times, EPA did not seek comment once in Sections V and VI.

While IPAA/AXPC has not attempted to take issue with or refute every inaccuracy or assertion contained within these sections of the preamble, EPA's key elements are addressed briefly below:

- IPAA/AXPC agrees there is a wealth of additional information – much of it taking issue with anthropogenic global warming. A cursory review of the website Watts Up With That, http://wattsupwiththat.com/, reveals the science is not "settled" as EPA would have one believe.
- While EPA alleges that the oil and natural gas sector is one of the "largest emitters of methane", EPA's own numbers illustrate that in 2013, the oil and natural gas sector accounted for 2.22% of the Total U.S. GHG Inventory.[31] And as stated earlier, the exploration and production segment is only 1.07% of that 2.22%. The oft-quoted greenhouse gas multiplier is subject to manipulation based on the timeframe used to make the carbon dioxide comparison, and the "legacy warming from fugitive methane is minuscule compared to that of carbon dioxide."[32]
- The adequacy of EPA's endangerment finding is far from settled and will certainly be subject to legal challenge upon final promulgation of this rule if EPA persists with its intention to regulate methane directly.[33]
- In supporting its claim that EPA better understands climate change, it cites the Intergovernmental Panel on Climate Change's (IPCC) 2013-2014 Fifth Assessment Report (AR5). Many of these "citations" or statements to support EPA's position are

[29] *Id.* at 56,601.

[30] *Id.* at 56602.

[31] *Id.* at 56,608.

[32] Elizabeth A. Muller and Richard A. Muller, *The Facts About Fugitive Methane*, Centre for Policy Studies (Oct. 2015) *available at* http://www.cps.org.uk/files/reports/original/151022155129-TheFactsofFugitiveMethane.pdf.

[33] David Yaussy and Elizabeth Turgeon. *Unringing the Bell: Time for EPA to Reconsider Its Greenhouse Gas Endangerment Finding*, 116 W.Va. L. Rev. 1007 (2014).

from the Summary for Policy Makers, which was written by the policy makers, not the scientists who authored the report.[34] Judith Curry, former Chair of the School of Earth and Atmospheric Sciences at the Georgia Institute of Technology, evaluated and commented on the AR5, not the Summary for Policy Makers, and noted various factors that evidence a weakening of the case for anthropogenic global warming:

- Lack of warming since 1998 and growing discrepancies with climate model projections
- Evidence of decreased climate sensitivity to increases in CO_2
- Evidence that sea level rise from 1920-1950 is of the same magnitude in 1993-2012
- Increasing Antarctic sea ice extent
- Low confidence in attributing extreme weather events to anthropogenic global warming.[35]

- EPA also relies heavily on the U.S. Global Change Research Program's (USGCRP) 2014 National Climate Assessment, Climate Change Impacts in the United States (NCA3), to support its alleged climate change impacts – ranging from decreased Artic summer sea ice to increased sea levels to drier/more intense storms, as well as greater impact to children and the elderly.
    - Studies not cited by EPA demonstrate no significant changes or deviations from cyclical patterns in the quantity of ice.[36]
    - As to the frequency and intensity of storms, other studies not cited by EPA raise questions regarding storm predictability: "October marks a continuation of a record-long major hurricane (Category 3 or stronger) landfall drought in the United States. The last major hurricane to make landfall in the U.S. was Wilma on October 24, 2005. This major hurricane drought surpassed the length of the eight-years from 1861-1868 when no major hurricane struck the United States' coast. On average, a major hurricane makes landfall in the U.S. about once every three years. The reliable record of landfalling hurricanes in the U.S. dates back to 1851."[37] "The bar [see footnote] charts

[34] Wim Rost, *IPCC ≠ Science ↔ IPCC = Government*, Watts Up With That (Nov. 29, 2015) *available at* http://wattsupwiththat.com/2015/11/29/ipcc-science-ipcc-government/.

[35] Judith Curry, *IPCC AR5 Weakens the Case for AGW*, Climate Etc. (Jan 6, 2014) *available at* http://judithcurry.com/2014/01/06/ipcc-ar5-weakens-the-case-for-agw/.

[36] http://ocean.dmi.dk/arctic/plots/icecover/icecover_current_new.png; http://nsidc.org/data/seaice_index/images/daily_images/S_stddev_timeseries.png

[37] National Oceanic and Atmospheric Administration , National Centers for Environmental Information, State of the Climate: Hurricanes and Tropical Storms for October 2015 (Nov. 2015) *available at* https://www.ncdc.noaa.gov/sotc/tropical-cyclones/201510. While other ranking metrics for hurricane's are being developed, the National Hurricane Center for the National Oceanic and Atmospheric Administration and EPA continue to regularly rely on an cite to the Saffir-Simpson Hurricane Wind Scale to compare the potential impacts of hurricanes.

> below indicate there has been little trend in the frequency of the stronger tornadoes over the past 55 years."[38]

The title of Section V of the preamble is "Why is the EPA Proposing to Establish Methane Standards in the Oil and Natural Gas NSPS?" EPA's stated concerns are ostensibly laudable. However, nothing set forth in Section V or Section VI of the preamble justifies or necessitates separate methane NSPS from the exploration and production sector.

A. Consistent with the Clean Air Act, State Programs Should Control

The CAA is structured such that states should have primacy and be primarily responsible for compliance with the requirements of the Act. Many of the states with the most active shale plays have implemented state regulations to address many of the emissions sources targeted in the proposed Subpart OOOOa regulations. States with state permitting programs and/or State Implementation Plans (SIPs) that contain limits on sources that are legally and practically enforceable should be deemed sufficient for overlapping and duplicative requirements in Subpart OOOO and the finalized version of Subpart OOOOa. EPA should defer to existing state regulations to the greatest extent possible to deem compliance with state regulations on the same sources as constituting compliance with the final Subpart OOOOa regulations. Duplication and inconsistency between state and federal regulations simply add to the cost of compliance with little to no additional benefit to the environment. To the extent EPA does not allow for such provisions, EPA should demonstrate that the duplicate or "more stringent" regulations that EPA is promulgating are incrementally cost-effective: meaning that the cost associated with the duplicative or inconsistent federal control requirement is cost-effective based on the incremental environmental benefit above the state regulation already in place or deem compliance with the state regulations as compliance with Subpart OOOOa. EPA must justify with an *incremental* cost and benefit analysis any proposal to impose additional federal regulations that it deems more stringent than existing state regulations.

B. Fugitive Emissions at Well Sites and Compressor Stations

Managing fugitive emissions or "leaks" from the oil and natural gas sector appeals to common sense. Leaks associated with natural gas operations represent safety concerns, negative impacts to the environment, and are wasteful from an economic standpoint. The industry has relied on audio/visual/olfactory (AVO) inspections for many years, and only recently has the industry focused considerable attention on technological advances to detect leaks. It is an emerging process – both in terms of technology and methodology (regulatory and corporate management). EPA's preamble bears this fact out with the number of specific requests for "comment" on the leak detection aspect of the proposal. IPAA/AXPC supports, in concept, the ability to satisfy the leak detection and repair (LDAR) requirements of the proposal with an appropriate "corporate fugitive monitoring plan," but a 60-day comment period (plus a random 17 days halfway through the comment period) is not enough time to create and implement such a

[38] National Oceanic and Atmospheric Administration, National Centers for Environmental Information, Historical Records and Trends, *available at* https://www.ncdc.noaa.gov/climate-information/extreme-events/us-tornado-climatology/trends.

program. Additionally, recent data and studies demonstrate that production fugitive emissions are characterized by a few sources ("fat tails") representing the overwhelming majority of emissions.[39]

A handful of states are taking the lead on creating regulatory frameworks, each of which is different, and none of which follows the proposed EPA framework. Experience with the state programs is indicating that correction of fat tail emissions results in effective management of fugitive sources and, once corrected, the need for full-blown inspections/surveys more often than an annual frequency is unjustified. Even the states with the most aggressive LDAR programs are not focused on quantifying the total amount of methane "saved." The very nature of fugitive emissions makes it very difficult to quantify how much gas is being "saved." It is not as simple as a single point source with consistent flow where one can easily measure the emissions before and after controls are "bolted on" a stack or emission point. The component count at most facilities is likely in the hundreds to thousands, with only a very small percentage of the components leaking. For those that are leaking, the quantity of gas leaking varies considerably. Nonetheless, EPA crunched some numbers in a hypothetical world and assigned some value to the natural gas that is saved. In reality, very few companies will realize any change in the sales meter pre- and post-LDAR. The savings are largely illusionary to the average operator. The value of the natural gas "saved" through the LDAR programs is highly speculative. In addition, EPA did not account for the size of the facility when estimating the percent savings. EPA's percentage saved calculations are based on Colorado's regulations and related data. Colorado's 80% reduction, which EPA adopts, is based on monthly inspections for facilities with less than 50 tons per year. EPA assumes, with no additional support, that their proposed regulations can achieve an 80% reduction from quarterly inspections for all facilities, regardless of size. IPAA/AXPC questions the validity of EPA's cost-effectiveness analysis for its proposed LDAR regulations.

EPA should withdraw the proposed LDAR NSPS because it has not been developed based on the emerging experiences with fugitive emissions management programs, it locks in a technology approach that may be cost ineffective as experience with state programs evolves, and it would stifle the development of better approaches. Instead, EPA should work with states to learn from their programs and provide for a flexible voluntary fugitive emissions program in the Methane Challenge that would build a basis for a cost-effective NSPS in the future, if one is needed. At a minimum, implementation of any program should be delayed and EPA should work with industry to establish the necessary elements of a corporate fugitive monitoring plan that companies could adopt and customize to meet their particular needs while satisfying EPA's LDAR requirements. This performance-based approach would be the most effective and efficient.

Other than the handful of companies that provide the optical gas imaging (OGI) technology, industry is united in its position that EPA should not select or dictate the technology for detecting leaks. The concept behind NSPS is setting a performance standard that must be

[39] David T. Allen, *et al.* Measurements of methane emissions at natural gas production sites in the United States, Proceedings of the National Academy of Sciences of the United States of America (Aug. 19, 2013) *available at* http://www.pnas.org/content/110/44/17768.

met – not dictating a particular technology. Dictating a particular technology stifles innovation. There are approximately a half dozen or more additional technologies/techniques that are being marketed and/or developed including, but not limited to: tunable diode laser absorption spectroscopy; 3-channel non-dispersive gas correlation infrared spectrometer; mid-infrared laser-based differential absorption light detection and ranging; simultaneous-view gas correlation passive infrared radiometer; acoustic gas lead detectors; and remote methane leak detectors. These are in addition to the existing Method 21 procedure that some companies find workable and preferable. The need and motivation to "build a better mouse trap" will cease to exist if EPA dictates the technology, and there is no reason for EPA to select one technology.

OGI/forward looking infrared (FLIR) technology suffers from numerous limitations. Perhaps most importantly, it is not inherently safe – if not used properly on site, it could cause an explosion. Additionally, the results of the camera, the "pictures", are difficult to interpret and subject to misinterpretation, e.g., what appears to be a leak could simply be a heat plume. These problems are exacerbated in windy and/or cold conditions that are prevalent in a number of the shale plays. The technology is prohibitively expensive to smaller operators, and there is a limited supply of qualified service providers that can afford the camera. Even for the larger companies, at approximately $120,000 a camera, there will be a limited supply. For companies with diverse geographic locations, it will be difficult to comply with the short survey timeframes set forth in the proposal. The proposed regulations also require survey pictures to contain GPS coordinates. Some of the cameras do not have that function, thus requiring another device to comply with the regulations. Finally, the OGI technology is not a quantitative tool – it is not capable of determining how much natural gas is leaking.

As discussed above, a number of states are taking the lead on LDAR programs and are learning how to effectively and efficiently implement controls and administer surveys. Despite repeated requests by IPAA during the Small Business Advocacy Review Panel process and other trade association requests for EPA's proposal to be consistent with and not duplicative of existing state LDAR programs, EPA's proposal runs roughshod over existing state programs. Inconsistencies and duplication in the proposed regulations and existing programs are burdensome, inefficient and costly – especially to small entities and independent operators. IPAA/AXPC specifically incorporates by reference the comments on the NSPS proposal of Anadarko which highlight the inconsistencies between the proposed Subpart OOOOa and existing regulations in Colorado and Pennsylvania. EPA's proposed regulations essentially punish states and operators within those states that proactively moved to address fugitive admissions. Such an approach does not make for sound policy. States with existing programs should be deemed sufficient, and compliance with the state program should be deemed as compliance with the finalized federal program. This is not a new concept in the context of EPA's NSPS for the oil and natural gas industry, and EPA should revise the proposed regulations to model the exemption for storage vessels in Subpart OOOO and deem legally and practically enforceable state LDAR programs to suffice for the proposed federal regulations. Such revisions would greatly reduce the regulatory burden for sources located in states that have proactively addressed fugitive emissions from the oil and gas sector. To the extent a party (whether EPA or a third party) believes an existing state program is inadequate, the burden should be placed on the entity making the allegation, and EPA should establish a process to address the complaint.

Additionally, consistent with the CAA, the state programs should control, and EPA should implement procedures in the final regulations for states to submit for approval a state-based LDAR program that is deemed sufficient to satisfy EPA's final LDAR requirements.

Another issue advocated by IPAA/AXPC and/or member companies prior to publication of the proposed rule was to *not* base LDAR requirements on arbitrary component count or percentage of components leaking at a given site – yet that is exactly what EPA proposed. EPA suggests that its proposal, which bases the frequency of surveys on the percentage of leaking components, provides an "incentive" for companies to be more vigilant in their identification and repair of leaks. As discussed above, the incentive to identify and repair leaks already exists, as there is a strong safety and economic incentive. EPA's proposal based on percentage of leaking components creates a recordkeeping nightmare. The regulations are less than clear as to what constitutes a "facility" in terms of where to draw the line and stop the component count. As a result of the ambiguity in the proposal, it is difficult to evaluate if EPA's assumptions on components per well count are accurate. There is tremendous variability in the number of wells and types of equipment on well sites. For EPA to base its cost effectiveness on a "model well pad" is problematic. Member companies report component counts in the hundreds to thousands of components. Such a wide range is in part, a function of lack of clarity in the regulations and also calls into question the accuracy of EPA cost-effectiveness assumptions on a model plant. If EPA persists with a percent-leaking methodology, the regulations need to be clarified on what components are to be counted and how to define the limits of the facility for the component count. EPA's own evaluation concluded that quarterly surveys of the intensity proposed are not cost-effective. Yet, if more than 3% of the components are leaking, the proposed regulations require quarterly surveys. If quarterly surveys are not cost-effective, having more than 3% of the components leaking does not somehow make the quarterly surveys become cost-effective. Additionally, there is no direct correlation between the number of leaking components and quantity of emissions, so basing the frequency on the percentage of leaking components does not necessarily mean the program will be more effective at preventing fugitive emissions. While there is no direct correlation between the number of components and quantity of emissions, the component count/percent leaking ratio directly impacts the recording keeping requirements – again with no demonstrated reduction in emissions. It is just more paperwork compliance for operators.

Furthermore, leaks are often related to some sort of malfunction and once fixed, stay fixed such that there is no need or rational basis to increase the survey frequency. As EPA discussed in the preamble, experience with the state programs demonstrates there are "gross emitters" or "super emitters" that represent a very large percentage of the overall fugitive emissions profile (consistent with the fat tail issues discussed above). Preliminary information from companies with operations in states with aggressive LDAR programs already in place indicates treating every component "equally" is an inefficient use of limited resources. This information suggests that components subjected to constant or frequent vibration (such as components associated with a compressor) are much more likely to have leaks than say, threaded connections. And in terms of total component count at a given facility, there are likely to be many more threaded connections than the components most likely to leak at the relatively few compressors. Even if it is difficult to predict "gross emitters" or "super emitters" at any given

facility, the knowledge gained from sources within states with existing LDAR programs suggests that treating all components equally and basing the frequency of surveys on leaking component percentages is inefficient from an emissions reduction perspective and extremely burdensome and costly – especially to small entities. Again, more time to craft a regulatory program designed to identify and repair gross emitters would be preferred by IPAA/AXPC.

Basing the frequency of surveys on the percent of components leaking exemplifies that EPA is largely guessing at what constitutes an appropriate LDAR program. EPA should not rush to judgment and instead learn from the state programs to determine the most effective and efficient way to reduce leaks. Alternatives include a performance-based approach such as that in Wyoming, basing the survey frequency on the size of the facility or the quantity of emissions leaked or perhaps a combination of a more technology-based annual survey with periodic AVO "inspections" between annual surveys. If EPA persists with the percentage-leaking-component approach, flexibility should be built into the program that companies could commit to semi-annual surveys and not be subject to fluctuation from quarterly to annual surveys based on the number of components leaking. For some companies, the ability to plan for semi-annual reporting without the risk of quarterly monitoring would be more beneficial than the changing requirements and potential cost saving of annual surveying. However, for some smaller entities or independent operators, the ability to reduce surveys to an annual basis might be beneficial. Sources should be given the flexibility to choose. Flexibility in complying with the LDAR program will help reduce the cost and burden.

Individual components that are to be included for "fugitive" emissions monitoring must be better defined and differentiated from components that are designed to emit a certain amount of natural gas under certain circumstances. Further, components of the storage vessels, e.g., closed cover/vent/control systems, already covered under Subpart OOOO for storage vessels should not be subject to additional requirements. As some states have done, EPA should more clearly define and exclude components that are designed to release pressure for safety reasons, e.g., thief hatches and enardo valves.

Dictating a particular technology (OGI/FLIR) and then requiring the initial survey be conducted within 30 days (and repaired within 15 days) is an unreasonably tight time period – especially for smaller entities and operations with disperse and remote locations. These timeframes should be extended to 60 and 30 days, respectively. If EPA persists with the unrealistic time frames, a mechanism allowing for a "variance" on the time frames when certain circumstances exist should be built into the regulations. Even with companies with the resources to purchase a camera, their operations may be geographically dispersed or weather conditions are uncooperative such that they cannot realistically get from one location to the other. Smaller entities and some independent operators who cannot afford the dictated technology are then at the mercy of the market to comply within 30 days. Especially during the early implementation of the new rules, many sources are likely to incur enforcement/liability through no fault of their own due to an inability to purchase the technology or hire service providers with the necessary capabilities.

EPA's cost-effectiveness for the proposed LDAR program requirements is fundamentally flawed because it merely looks at the cost of conducting the survey and fails to accurately

account for the increased record-keeping and reporting requirements. EPA's analysis is myopically focused on a straight up comparison of "cost-effectiveness" for semi-annual surveys versus annual and opts for semi-annual requirements because the relative cost-effectiveness is the same: $2,475 for annual versus $2,768 for annual under the single pollutant approach at the well site.[40] EPA conducted similar comparisons for the multi-pollutant approach at the well site (as well as both comparisons at a compressor station).[41] In every instance the annual survey was more cost-effective but EPA selected the semi-annual surveying because the cost/ton removed was similar. There are two problems with that philosophy. First – in selecting the semi-annual requirement, EPA basically double the cost of the requirement to industry. Second, the theoretical or modeled additional reduction in emissions is a very small percentage of the overall emission reductions associated with the proposed regulations. The additional cost associated with the annual survey requirement is substantial while the increased benefit to the environment is minimal. The additional regulatory burden will be disproportionately felt by small entities. The proposed LDAR requirements basically require all companies, regardless of size, to implement costly information systems to track and monitor compliance. For example, one of the larger, more sophisticated operators with a data management system already in place incurred an additional $10,000 in external costs associated with developing new or revised software, and an additional $37,000 associated with internal set-up costs and employee time focused on implementation. These costs were associated with complying with Colorado's LDAR program in a small gas field of 174 wells and, as indicated, were in addition to an existing management system at an estimated cost of $80,000 annually. It does not appear that costs such as these were considered in EPA's cost-effectiveness analysis. EPA's proposed requirements appear to be based on what is required at natural gas plants, and expanding that level of detail to remote, un-manned production sites is inappropriate. Such level of detail is not warranted nor has the cost been adequately justified – especially over the life of the well. The majority of the "benefit" associated with the surveying is on the initial startup of a well (or startup after modifications). It is impossible to calculate an accurate annual gas recovery rate over the life of a well site.

The new record-keeping requirements associated with the LDAR are particularly burdensome to smaller operators with limited staff. For example, the preamble provides limited to no justification for requiring the date-stamped digital photograph. If EPA retains the burdensome record-keeping requirements, companies should be allowed to keep the records on site or at a regional field office and produce them upon request. Companies should not be required to submit electronically or manually to the permitting agency. EPA requested comment on "ways to minimize recordkeeping and reporting burden." As discussed above, EPA should evaluate existing state requirements and liberally deem them sufficient for purposes of Subpart OOOOa and establish a mechanism for states to implement their own programs that supersede and satisfy Subpart OOOOa.

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[40] Oil and Natural Gas Sector: Standards for Crude Oil and Natural Gas Sector: Standards for Crude Oil and Natural Gas Facilities – Background Technical Support Document for the Proposed New Source Performance Standards 40 CFR Part 60, subpart OOOOa (Aug. 2015) (hereinafter, TSD), at Table 5-14.

[41] *Id.* at Tables 5-15, 5-17, 5-18.

IPAA/AXPC supports the limited exclusions from the LDAR requirements that EPA has proposed but requests certain clarifications and expansion of the exclusions. Excluding low production well sites – defined as the "average combined oil and natural gas production for the oil and natural gas production for the wells at the site being less than 15 barrels of oil equivalent (boe) per day averaged over the first 30 days of production"[42] -- is extremely helpful for small entities and smaller independent operators. IPAA/AXPC understands the 15 boe is also an "off ramp" – that is, when a well drops below 15 boe, it is no longer subject to the LDAR requirements. IPAA/AXPC requests the regulatory language be revised to indicate that when a well drops below 15 boe, based on a 30-day average production, the LDAR requirements no longer apply. EPA should provide an additional exclusion for well sites with component counts below EPA's model well site: below 548 components for gas well sites and below 135 components for oil well sites should be excluded from the LDAR requirements.[43] EPA concluded that it is not cost effective to implement the proposed LDAR requirements on sites with lower well component counts and therefore those well sites should be excluded. Such exclusion would help all producers but would have greatest benefit to small entities that are likely to have smaller well sites. IPAA/AXPC also supports EPA's proposed exclusion for well sites with extremely dry gas where only the wellhead exists and there is no "ancillary equipment." IPAA/AXPC requests clarification that a meter and drip present at the well site do not constitute "ancillary equipment." Finally, in response to an EPA request for comment, IPAA/AXPC suggests that the LDAR requirements should only apply to those components that are directly connected to the fractured, refractured, or added well and should not apply to tank batteries or other equipment off the well pad which may receive fluids from the fractured, refractured or added well.

C. Oil Well Reduced Emission Completions

As with the proposed LDAR requirements, in its rush to promulgate regulations aimed at additional sources of VOCs and methane, EPA assumed that reduced emission completions (RECs) on oil wells are essentially the "same" as RECs on natural gas wells. Unlike a natural gas well, where the price of natural gas dictates many operational decisions, the economic driver for oil wells is the price and volume of oil – not natural gas. When EPA promulgated Subpart OOOO regulations for VOCs and RECs on natural gas wells, EPA indicated it did not have enough information to determine if oil well RECs were cost-effective.[44] The cost-effectiveness of oil well RECs was also raised by EPA in the Methane "White Papers" released on April 15, 2014.[45] IPAA/AXPC and individual member companies submitted comments on EPA's oil well

[42] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,612 (Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60).

[43] TSD at Table 25-1.

[44] Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 77 Fed. Reg. 49,490 ,49516 (Aug. 16, 2012)

[45] U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Oil and Natural Gas Sector Hydraulically Fractured Oil Well Completions and Associated Gas during Ongoing Production* (Apr. 2014), *available at* http://www3.epa.gov/airquality/oilandgas/2014papers/20140415completions.pdf.

REC White Paper - identifying concerns with the cost-effectiveness of RECs for oil wells.[46] EPA's preamble discussion in Section VII of the proposed standards for oil well RECs makes a general reference to the Technical Support Document (TSD) for the current proposal in terms of justifying its best system of emissions reduction determination, but there is no updated cost/benefit data cited in the proposal. The citations refer back to the "2012 NSPS evaluation." It appears EPA has failed to cite any new or additional information collected since the 2012 evaluation to support the cost-effectiveness of the proposed oil well REC requirements. The economics of natural gas RECs are different and do not support oil well REC requirements.

Based on the preamble discussion of undertaking of an oil well REC, EPA assumes the process is essentially the same, but this is not necessarily the case. While certain wells will have relatively clear initial and separation flowback stages like natural gas wells, there are instances where there is no separation flowback stage owing to the lack of gas or quality of gas such that operation of a separator is not feasible. On certain wells, the initial flowback stage is followed by directing the flowback immediately into the production battery. Perhaps more so than with RECs on natural gas wells, the various stages of flowback on oil wells can be difficult to clearly delineate, and the ability to utilize a separator is a function of engineering judgment. IPAA/AXPC supports the concept of identifying two stages of flowback, with no control placed on the associated gas with oil well completions during the initial flowback stage. However, there will be situations where certain oil well completions will not experience a separation flowback stage.

In the preamble discussion of the REC requirements for both subcategory 1 and subcategory 2 wells, EPA expressed a clear intention to allow for venting of emissions in lieu of combustion during periods when the flowback gas is noncombustible.[47] This intent is particularly important for completions utilizing inert gas, such as nitrogen or nitrogen foam, instead of water as the medium for the fracturing process. The inert gases present in the flowback make the gas, for a period of time, "not of salable quality" and technically infeasible. The relevant provisions of the proposed regulations at 40 C.F.R. 60.5375a(a)(3) and 40 C.F.R. 60.5375a(f)(2) should be modified at the end of the provision to allow for venting when "*it is technically infeasible due to inert gas concentration.*" The addition of this phrase at the end of the current proposed language would eliminate any ambiguity as to EPA's intent.

IPAA/AXPC agrees that the feasibility of oil RECs should take into consideration the availability of gathering lines and that it is not as simple as a linear distance from a gathering line. As EPA acknowledges in the preamble, there are many factors that determine gathering line availability – not just distance. There are other considerations that drive the decision to recover gas which include, but are not limited to, the following factors: gas volume, gas pressure, gas Btu content, gas liquid content, sales line gas pressure requirements, moisture

[46] Comments of the Independent Petroleum Association of America and Western Energy Alliance on White Papers on Methane and VOC Emissions in the Oil and Natural Gas Sector per the Climate Action Plan Strategy to Reduce Methane Emissions (June 16, 2014).

[47] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,630, 56,632 (Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60).

requirements, compression, and current takeaway capacity of existing gathering systems. One workable approach that might assist regulators is to use a linear distance, such as a ¼ mile, to presume that flaring is permitted because it is generally agreed that, beyond that distance a gathering line is not available. The converse, a gathering line within a ¼ mile, should not be assumed to be available prompting a case-by-case determination based on the factors detailed above. Again, IPAA/AXPC supports EPA's acknowledgment that the availability of a gathering line must be considered in evaluating the feasibility of an oil well completion but that it is not as simple as designating a linear cut point.

IPAA/AXPC supports the various exclusions from the oil well REC requirements for oil wells less than 15 boe; wells with a gas-to-oil ratio (GOR) of 300 or less; and the low-pressure well. Although not an exact science, operators can make engineering judgments and estimations based on experience in a developed formation. If the well initially exceeds 15 boe, a potential solution is to allow the operator to temporarily shut in the well and bring in REC equipment or limit the production such that the well does not make more than 15 boe for any measurement period as long as the average rate of the averaging period is 15 boe or less. In the event that the operator, based on strong well performance, decides to bring in REC equipment, he could earn a 0 bopd credit to the averaging period for every day the REC is used. IPAA supports the inclusion of an exclusion for a "low-pressure oil well" but it is not appropriate to utilize the definition for a "low-pressure gas well." Oil and water are fairly equivalent on their impact on the intent of this low-well pressure exemption in the early phases of flowback, and the water/oil ratio will change significantly during the early flowback periods for hydraulically fractured wells. The main difference is that, once the hydraulic fracture load stops coming back, a gas well will typically have much less liquids in the production tubing, making the surface pressure actually higher for the gas well vs. an oil well. This difference would be reflected in the 0.038 number which represents the gas gradient in the well, which would impart a back pressure. For oil wells this back pressure would be higher, i.e. more liquids in the tubing, and this factor should be increased. For example a well making 15 boe up 2-3/8" production tubing at a 300 GOR could have a gradient of 5 to 10 times as much. The new record-keeping requirements associated with oil RECs (but also applicable to natural gas RECs) disproportionately impact the smaller, independent operators (conventional operations).

Finally, IPAA/AXPC continues to believe EPA's cost-effectiveness analysis for oil well completions is flawed because it is taking "credit" for well completions industry has already done or will do regardless of regulations. IPAA and WEA filed extensive comments on EPA's oil well completion White Paper on June 16, 2014.[48] The issues raised in that process have not been adequately addressed by EPA in the RIA or Technical Support Document for this rulemaking. The most relevant provisions of those comments are reproduced below:

> Finally, we question the need or benefit of EPA requiring reduced RECs or combustions devices/flares at oil wells as operators are already engaged in such

[48] Comments of the Independent Petroleum Association of America and Western Energy Alliance on White Papers on Methane and VOC Emissions in the Oil and Natural Gas Sector per the Climate Action Plan Strategy to Reduce Methane Emissions (June 16, 2014). The Comments of AXPC/America's Natural Gas Alliance (ANGA) are incorporated by reference.

> practices at a majority of the wells. There is a clear economic incentive to capture as much of the gas as possible and where it is not possible to capture the gas, safety concerns for the personnel at the well site drive the installation of flares. It is a matter of economics and common sense—if the gas can be captured economically, it will be. If it cannot be captured economically, and it is present in sufficient quantities to represent a safety concern, it is flared.
>
> See the comments above, as they pertain to EPA's data sources and estimates.
>
> For the reasons set forth above, we have considerable doubt as to the accuracy of the national and per well estimates of methane and volatile organic compounds ("VOC") emissions for hydraulically fractured oil well completions. There is significant variation in the emissions among different well types and wells from different regions. As such, a "national estimate" will not necessarily be representative of wells from a particular region (and, in fact, would be representative only by chance).
>
> . . .
>
> As to factors that influence emissions, there are numerous factors that were not discussed in the White Papers. Most importantly, the White Papers do not adequately address the complex nature of what EPA terms "co-produced" wells, where both oil and gas are produced. Such wells are difficult to classify in terms of how any given well will behave in a wide variety of geologic formations and basins. In addition, EPA does not discuss the well-established fact that nearly all oil wells that produce appreciable amounts of gas are controlled by a combustion device for safety reasons. As mentioned above, the existing economic and safety incentives result in a majority of these wells being "controlled"—whether by a REC or combustion device. In fact, a survey submitted as part of the docket for NSPS Subpart OOOO was conducted by AXPC/ANGA member companies that showed that greater than 90% of wells were controlled prior to the rulemaking. Comment submitted by Amy Farrell, Vice President of Regulatory Affairs, America's Natural Gas Alliance (ANGA) and Bruce Thompson, President, American Exploration and Petroleum Council (AXPC); EPA-HQ-OAR-2010-0505-4241. A similar Texas Energy Alliance survey had comparable results, again supporting the position that further EPA requirements mandating REC/flares are not necessary.[49]

In the TSD for the proposed Subpart OOOOa, EPA continues to claim ignorance as to the extent state and local regulations require well completions and claim an arbitrarily low assumption that only 7 percent of completions are controlled in the absence of federal regulations.[50] This

[49] *Id.* [internal citations omitted]

[50] TSD at 22.

arbitrarily low assumption skews EPA's cost-effectiveness and takes "credit" for activities the industry is doing on its own.

D. Pneumatic Pumps

IPAA/AXPC's primary concern with the proposed requirements for pneumatic pumps is that EPA has overestimated the ease (and thus the cost) of sending captured gas to an existing combustion device. It is not as simple as plumbing a line from the pump to the control device. The intermittent nature of the gas flow and low pressures can create serious safety and operational difficulties if not appropriately designed along with significantly increasing engineering costs associated with the closed vent system upgrades. The difference between the amount of gas being vented from a storage tank and the amount of gas coming from a pneumatic pump is large, and designing a closed vent system to properly account for this pressure differential would be exceedingly difficult and costly. To meet the needs of both components, the final design would likely have the potential to increase emissions (such as being forced to use a small compressor or being forced to set thief hatches at different pressures that in turn cause more emission events from the tanks) than if the pump was vented directly to the atmosphere. The volume of gas to be captured from pneumatic pumps is relatively small, and when EPA more accurately reflects the cost associated with capturing the gas and routing it to an existing control device, IPAA/AXPC questions whether the proposed controls will be cost-effective. If EPA persists with its proposed controls on pneumatic pumps, it should clarify the definition of an "affected facility" and the interplay with reporting requirements. "Affected facility" should mean only new or modified continuous high-bleed pumps and specifically exclude low-bleed pumps (< 6 scfh). Since low-bleed pumps would not be considered an "affected facility," it is assumed they would not be subject to the reporting requirements for high-bleed pneumatic pumps. IPAA/AXPC requests confirmation of its reading of the reporting requirements.

The applicability of EPA's proposed regulations turns on whether a control device is already present at the site. EPA's regulations and preamble are silent as to whether the existing control device is already subject to NSPS and therefore an affected facility. To the extent the existing combustion device is not an affected facility, Subpart OOOOa should be clarified that existing, non-affected facility combustion devices should not become subject to NSPS simply because a new pneumatic pump is installed or an existing pump is modified. If EPA intends to pull in the existing control device and make it an affected facility, EPA must revise its cost-effective analysis to account for the additional costs associated with "converting" the existing control device to an affected facility.

E. Compressors

IPAA/AXPC supports EPA's indication that the compressor rules promulgated under Subpart OOOO and proposed Subpart OOOOa do not apply to compressors at the wellsite. IPAA/AXPC interprets the proposed CTG for compressors as essentially the same as that proposed in Subpart OOOOa, yet the CTG indicate the regulations would apply to compressors

"between the wellhead and point of custody transfer."[51] This language seems inconsistent with the concept that compressors at the well site are not subject to Subpart OOOO or the proposed Subpart OOOOa. IPAA/AXPC requests clarification. Similarly, IPAA/AXPC requests clarification on whether compressors at well sites are subject to LDAR requirements. Finally, in response to EPA's specific request, IPAA/AXPC suggests the fugitive emissions requirements at compressor stations should apply only to the fugitive sources that are connected to the added or modified compressor.

F. Liquids Unloading

IPAA/AXPC supports EPA's conclusion that it does not have sufficient information to propose standards for liquids unloading. IPAA and WEA filed extensive comments on EPA's liquids unloading White Paper on June 16, 2014.[52] The numerous issues raised by IPAA/WEA have not been adequately addressed and continue to be the basis for IPAA/AXPC's position that controls aimed at reducing emissions from liquids unloading vary greatly based on numerous factors that make it difficult if not impossible to promulgate a cost-effective NSPS. IPAA/AXPC incorporates by reference these comments in their entirety regardless of topic. Nonetheless, certain portions of IPAA/WEA's comments on liquids unloading warrant repeating:

> The industry has a strong economic incentive to minimize venting episodes. Indeed, what EPA views as a pollutant is generally viewed by industry as a salable product and thus industry has an economic incentive to capture as much of the gas as possible. Unfortunately, it is not always possible to unload without venting—sometimes for safety reasons and sometimes for technological reasons. The limitations on the ability to minimize venting are difficult to predict and largely well-specific.
>
> Although the challenges associated with liquids unloading are equally prevalent among horizontal and vertical wells, the ability to recover the cost of "controls" will most likely disproportionately affect smaller operators, marginal wells and vertical wells. Nowhere in the charge questions or White Paper does EPA attempt to address the potential for such disproportionate economic impacts to result from a "one size fits all" approach to minimizing emissions during liquids unloading. The need to unload liquids depends primarily on reservoir pressure, liquid/gas ratio, and surface operating pressure; the most appropriate technology used to unload will depend on the producing formation, site equipment and logistics, and other considerations. There is a wide variety of reservoir properties across and within basins, and flexibility is critical in the continued production of these wells.

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[51] U.S. Environmental Protection Agency, Control Techniques Guidelines for the Oil and Natural Gas Industry (Draft), (Aug. 2015) *available at* http://www3.epa.gov/airquality/oilandgas/pdfs/og_ctg_draft_081815.pdf.

[52] Comments of the Independent Petroleum Association of America and Western Energy Alliance on White Papers on Methane and VOC Emissions in the Oil and Natural Gas Sector per the Climate Action Plan Strategy to Reduce Methane Emissions (June 16, 2014).

As a general matter, the national estimates of methane emissions based on EPA's Greenhouse Gas Reporting are overstated, over-reported and dated at this point. The 2012 API/ANGA study included in the White Paper indicates as much and concludes that EPA's Greenhouse Gas Inventory was overestimated by orders of magnitude. More source specific data—i.e., data specifically focused on liquids unloading—is needed before conclusions should be drawn as to this subsector's contribution to methane emissions from the broader oil and natural gas sector.

The formulas used by EPA to calculate the gas volumes vented during unloading events estimates that the entire well column is vented during an event. The reason for the unload is because fluid is sitting in this column, taking up this space, and resulting in an overestimation of emissions. Additionally, the formulas utilize only a casing diameter for wells without plunger lifts (and tubing diameter for wells with a lift). Most wells are generally equipped with production tubing strings in an effort to increase the velocity of the gas and liquids and reduce the potential for liquid [un]loading problems. When these tubing strings are in place, gas volumes vented during unloading events would be from the casing-tubing annulus (area between the outside of the tubing and the inside of the well's casing) and not from the entire volume of the well's casing. This is not accounted for in many of the estimates.

In addition, the formulas used by EPA assume that gas is being vented for any well liquid unload lasting longer than one hour (or 30 minutes for unloads that are plunger lift assisted). During the liquid unloading process, there is usually an initial release of gas followed by a period of time where operators are waiting for the liquid to travel up the well bore and nothing is being released from the well; this can happen for only a few minutes or up to several hours. The formulas assume that any duration longer than one hour is continually venting at a rate equal to the production rate of gas when in fact no gas is being vented, significantly overestimating the emissions from these activities.

Factors influencing regional differences in VOC and methane emissions are a complex set of variables that include temperature, pressure, hydrocarbon composition of the oil and gas within the production formation, gas to liquid ratio, well configuration, well depth and surface conditions at the time of the unloading event. The factors that influence the frequency and duration of liquids unloading include those listed in the previous sentence, and the solution for each well and/or application is based on engineering calculations and judgment and is intrinsically well-specific. Production engineers run models to determine the proper design and operating parameters. The numerous factors and inability to generalize even by formation make it difficult to predict which wells will be more susceptible to high levels of emissions associated with liquids unloading.

The need for liquids unloading is not based on a strict set of parameters or rules. It is based on a complex set of variables—primarily reservoir pressure, but

also including (but not limited to) gas to oil ratio, geologic formation types, and age of well. In addition to geological factors, technology-based factors include (a) large or no production tubing strings installed, (b) wells with high sales line pressure and no compression equipment installed at the surface, and (c) wells not equipped with artificial lift equipment such as gas lift mandrels/valves, plunger lift, rod pump, etc. Regarding the type of well, horizontal or hydraulically fractured wells are no more likely than vertical or non-hydraulically fractured wells to develop liquids [un]loading problems. It is not only a problem for wells further down their decline curve.

Simply put, one cannot generalize—there is no particular pattern or predictable model that would forecast which well types are prone to having liquids [un]loading problems. It is the inability to generalize that makes each well unique and requires a case-by-case analysis to address a liquid [un]loading problem. That said, there are some trends—the highest tendency are deeper wells with high liquid to gas ratios and low bottom hole pressure. Because the reservoir pressure does decline over time, liquid [un]loadings are more prevalent in older wells. Wells drilled and completed in formations drained by previous production may experience [un]loading problems more quickly. All wells with liquid saturations above irreducible levels will develop liquid [un]loading conditions.

The cost of the technologies varies and what will constitute a cost-effective technology will vary from well to well. For example with plunger lifts, the capital, installation, and startup cost is an exponential costing issue based on ever increasing depth of the well (e.g., the cost of a 11,000 to 12,000 foot well might approximate $25,000 to $30,000 for certain operations in East Texas whereas a 1000 foot well may only be $2000 or $3000). Also related to plunger lifts, a "smart technology" cost is dependent on many variables such as well density and availability of a communication network. The communication network for 400 densely spaced wells can easily cost approximately $4 million dollars (average of $10,000/well before adding the cost of the smart controls themselves). The EPA's high range of $18,000/well is not necessarily "high" for many situations. As to artificial lifts, the costs are substantially more. One member indicated capital and installation costs for 11,000 -12,000 foot wells are in the range of $150,000 per well -- much higher than EPA's estimates. Again, the depth of the well influences the costs figures and it is difficult and inappropriate to generalize. The best solution to the liquids unloading problem is a case-by-case decision based on the engineering judgment of the operators.

. . .

As noted above, the feasibility of the use of artificial lift systems is generally site-specific and therefore it is difficult to generalize. Artificial lift systems are just one of the available "tools" or technologies to extend the useful life of a well and are utilized where cost-effective. That said, they tend to be cost-prohibitive on deeper low production gas wells and work best on shallow wells

> capable of setting a pump/plunger/gas lift below the bottom perforations. Some characteristics that discourage the use of artificial lift include deep formations, corrosive production fluids, wells with high scaling tendency, and deviated wellbores. The feasibility of artificial lifts must be assessed according to the conditions of the individual well. One size does not fit all.
>
> In certain situations, gas wells with liquid content that are unloaded are capable of being controlled with flares attached to the tank vents at the production battery. In others, the high pressures in certain regions make routing blowdowns to tanks and flares extremely unsafe. Even wells that are blown down can sometimes be vented through tanks that are controlled in many cases by flares. The capability to do this, however, depends greatly on the conditions of the well bore and the equipment used to control (tanks, flares, etc.) These flares and the associated tanks/tank vents are not specifically designed to accommodate liquids unloading. Regarding the use of flares specifically for liquids unloading events, there are several design and operational issues: (1) liquids unloading are slug flow events that are inconsistent in both gas volumes and quality, (2) consequently, designing a flare for the wide range of operating conditions is challenging, (3) additional equipment may be required to prevent liquids from reaching the flare (separators, etc.), and (4) the intermittent nature of these events is another challenging design condition especially in avoiding smoking conditions, etc. To the extent that EPA contemplates a continuous flare to minimize emissions from these intermittent events, the negative externalities associated with the carbon dioxide emissions from the pilot should be factored into any analysis. To accommodate the operational issues associated with flares and associated equipment designed to specifically address liquids unloading, they would need to be relatively large which could present safety hazards and create local permitting issues.[53]

EPA's proposed Subpart OOOOa seems to leave the door open for potential regulation of emissions associated with liquids unloading and requested comment on the issue. IPAA/AXPC supports EPA's decision to not propose federal standards. The issues outlined above have not been adequately addressed by EPA and remain largely unaddressed.

G. Miscellaneous Requests for Input

- EPA requested input on "pressure-assisted flares." IPAA/AXPC is not entirely clear what EPA is referring to as pressure-assisted flares. To the extent IPAA/AXPC understands the type of flare EPA is referring to, IPAA/AXPC does not believe there is any reason to treat these flares differently than any other flare. Or stated slightly differently, pressure-assisted flares should be treated as any other flare subject to the Subpart OOOO and proposed Subpart OOOOa regulations

[53] *Id.*

- IPAA/AXPC supports a clarification that the storage vessel provisions do not apply to large (e.g., 25,000 bbls or more) tanks used for water recycling, as they have very low emissions but might trigger the 6-ton threshold because of size and volume of throughput. EPA's recognition that this water has very low emissions calls into question whether the smaller "storage vessels" that hold the same type of water, just smaller quantities, should be an affected facility.
- IPAA/AXPC does not support EPA's concepts of independent third-party verification, fugitive emissions verification, and "electronic reporting and transparency" as described as part of EPA's Next Generation Compliance and Rule Effectiveness. As an initial matter, companies should be allowed to verify issues internally. EPA's concept of utilizing certified reviewers would pose a significant problem for the industry in terms of not having enough qualified individuals to conduct the review. Eventually the market would adjust, but in the short term there would be a shortage. EPA's concept would create a problem in an attempt to solve an "issue" that currently does not exist. Finally, industry does not support a continuous parametric monitoring system since this would result in significant costs to companies that do not have supervisory control and data acquisition (SCADA) capabilities and would another add link in the system that could fail. A simpler and better solution would be to require all thief hatch vents to be set at a pressure above that of the main ventline.

V. Control Technique Guidelines for Ozone Nonattainment Areas

Clearly, the CAA provides direction to EPA and states that requires the use of RACM in Ozone nonattainment areas to manage emissions from existing sources. However, EPA's presentation of the CTG for oil and natural gas production facilities fails to provide a technological analysis based on the fundamental basis for RACM. Instead, it arbitrarily applies the new source BSER requirements to existing sources without any realistic analysis of whether these technologies are reasonably available and applicable as RACM. Moreover, as IPAA/AXPC demonstrated earlier in these comments, the differences between the oil and natural gas production industry and other industry segments requires a recognition that there are significant differences across the industry in the size and scope of operations that dramatically impact the economic implications of controls. The CTG proposals largely ignore this reality. Any CTG for oil and natural gas production facilities needs to provide an application threshold that excludes marginal oil and natural gas wells. Finally, with the revision to the NAAQS for Ozone, new areas – many of which are rural in nature – will be subjected to the RACM created by the proposed CTG. Without the appropriate recognition of the broad diversity of the oil and natural gas production industry and the need for the CTG to be based on appropriate existing source technologies, serious adverse impacts on American production could result. Not only has EPA failed to address this issue in the CTG proposal, EPA's own assessment of the nation's ability to attain the Ozone NAAQS demonstrates that this CTG is both unnecessary and counterproductive.

Consequently, IPAA/AXPC requests withdrawal of the current CTG proposal until EPA can address its serious shortcomings and determine whether a broad CTG proposal is appropriate as a RACM approach for oil and natural gas production facilities.

Following is a detailed discussion of the basis for IPAA/AXPC's opposition to the current CTG proposal and reasons why it should be withdrawn.

In its Federal Register notice regarding the *Release of Draft Control Technique Guidelines for the Oil and Natural Gas Industry*, EPA provides a pertinent description of the RACM process:

> Section 172(c)(1) of the Clean Air Act (CAA) provides that State Implementation Plans (SIPs) for nonattainment areas must include ''reasonably available control measures'', including ''reasonably available control technology'' (RACT), for existing sources of emissions. Section 182(b)(2)(A)of the CAA requires that for Moderate Ozone nonattainment areas, states must revise their SIPs to include RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. CAA section 182(c) through (e) applies this requirement to States with ozone nonattainment areas classified as Serious, Severe and Extreme.
>
> The CAA also imposes the same requirement on States in ozone transport regions (OTR). Specifically, CAA Section 184(b) provides that states in the Ozone Transport Region (OTR) must revise their SIPs to implement RACT with respect to all sources of VOCs in the state covered by a CTG issued before or after November 15, 1990. CAA section 184(a) establishes a single OTR comprised of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia.
>
> The EPA defines RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility'' (44 FR 53761, September 17, 1979).[54]

While this description is accurate, EPA wholly fails to meet the test of identifying "control technology that is reasonably available considering technological and economic feasibility."[55]

To understand EPA's failure, it is essential to expand our earlier discussion of the nature of the oil and natural gas production industry. As described earlier, the oil and natural gas production industry differs from other industries because of the inherent reality that its production is not constant. Instead, because of geological realities, production from most oil and

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[54] Release of Draft Control Techniques Guidelines for the Oil and Natural Gas Industry, 80 Fed. Reg. 56,577, 56,578 (Sept. 18, 2015).

[55] *Id.*

natural gas wells peaks at or near its earliest stages of full production. In essence, once the reservoir is opened, the contained pressure in the reservoir forces oil and natural gas through the well bore to the surface. But, this pressure also begins to diminish and with it the flow rate of the well. While various techniques are available depending on the type of formation to improve production, these actions adjust the rate of decline; they do not return the well to its original productivity.

Consequently, over time, wells move from strong producers to marginal ones. In fact, marginal wells are defined in federal law as oil wells producing 15 barrels/day or less and natural gas wells producing 90 mcfd or less. While these are the thresholds, the average marginal wells produce at much lower levels – the average marginal oil well produces 2.7 barrels/day and the average marginal natural gas well produces 22 mcfd. There are business implications to this production depletion as well. As the operating costs of production increase when production decreases, companies sell less productive wells to obtain capital for reinvestment in new production. Many characterize the oil and natural gas production industry as a "food chain" industry with larger companies selling properties that do not fit their production structure to smaller companies. As a result, marginal well ownership is dominated by smaller organizations, many of which are privately held small businesses. As IPAA/AXPC previously stated, there are over 1.1 million oil and natural gas wells in the United States; approximately 760,000 are marginal wells.

Correspondingly, as production from wells decreases, the physics of emissions changes as well. With less pressure in the well bore, there is less pressure driving emissions to the atmosphere from operating equipment. Even more telling, the most recent research efforts such as those by the University of Texas' Center for Energy and Environmental Resources demonstrate that emissions at oil and natural gas production operations are dominated by a small percentage of sources. Moreover, experience is indicating that when these sources are corrected and maintained, emissions reductions are sustained for long time periods.

Set against this pattern of industry structure and experience, EPA has failed to create a record that demonstrates it made a thoughtful analysis of the technologies it is proposing in the CTG as RACT – particularly in the context of considering technological and economic feasibility. Instead, EPA has arbitrarily applied the BSER technologies in Subpart OOOO and proposed to do so in Subpart OOOOa as they relate to new sources in the context of existing sources. In doing so, EPA fails to appropriately adjust the economic analysis from the NSPS materials to reflect the different circumstance of existing operations.

Among the key factors that EPA understates is the need to focus these regulations on VOC emissions. Because these CTG address VOC emissions, their cost effectiveness and technological appropriateness must be evaluated with regard to their impact on VOC emissions. For example, EPA bases much of its cost-effectiveness determinations on average VOC emissions, but RACT needs to be considered by each state for each nonattainment area. Different oil and natural gas formations produce different vapor compositions including significantly different fractions of VOCs in the vapor. Correspondingly, for the same cost, cost effectiveness will change; it will become less cost-effective as the VOC concentration diminishes.

Similarly, EPA bases much of its analysis on "model" facilities, but facilities differ depending on the nature of their operations. While EPA's draft CTG proposal recommends that facilities with only a wellhead should not be included in its fugitive emissions CTG, it should similarly recognize that facilities with fewer components than the EPA model facility need to be evaluated based on their actual structure rather than presumed to be cost-effectively controlled under the CTG.

These issues become more compelling when the CTG affect marginal oil and natural gas wells. EPA partly recognizes this reality by stating in the context of its fugitive emissions proposed CTG:

> For purposes of this guideline, the emissions and programs to control emissions discussed herein would apply to the collection of fugitive emissions components at a well site with an average production of greater than 15 barrel equivalents per well per day (15 barrel equivalents), and the collection of fugitive emissions components at compressor stations in the production segment. It is our understanding that fugitive emissions at a well site with low production wells are inherently low and that many well sites are owned and operated by small businesses. We are concerned about the burden of the fugitive emissions recommendation on small businesses, in particular where there is little emission reduction to be achieved.[56]

This recognition is entirely appropriate and accurate. However, it needs to apply to all of the CTG. Marginal wells are the most vulnerable U.S. production operations – particularly at the current oil and natural gas commodity prices that are well below the prices used by EPA in its cost-effectiveness analyses. Yet, these wells continue to provide a significant portion of American production. Additionally, the CTG should provide that status as a marginal well qualifies for an off ramp from continuing application of the regulations. That is, when a well's production drops to the point where it is considered a marginal well, the facility would no longer be subject to the regulation.

EPA also needs to recognize that its CTG proposal coincides with its decision to lower the Ozone NAAQS. American oil and natural gas operations are located where the resources exist. Unlike manufacturing facilities, they cannot choose where to operate. Historically, much of America's oil and natural gas has been located in largely rural areas. Recent development of American shale resources has placed operations closer to populated areas – many of which are in Ozone nonattainment areas. However, EPA's decision to lower the Ozone NAAQS captures areas that have previously been in attainment. Since a number of these new projected nonattainment areas encompass production areas, these CTG will have a broader and more significant potential impact on U.S. production. The following map provides a perspective on the interaction between American production areas and nonattainment with the new Ozone NAAQS.

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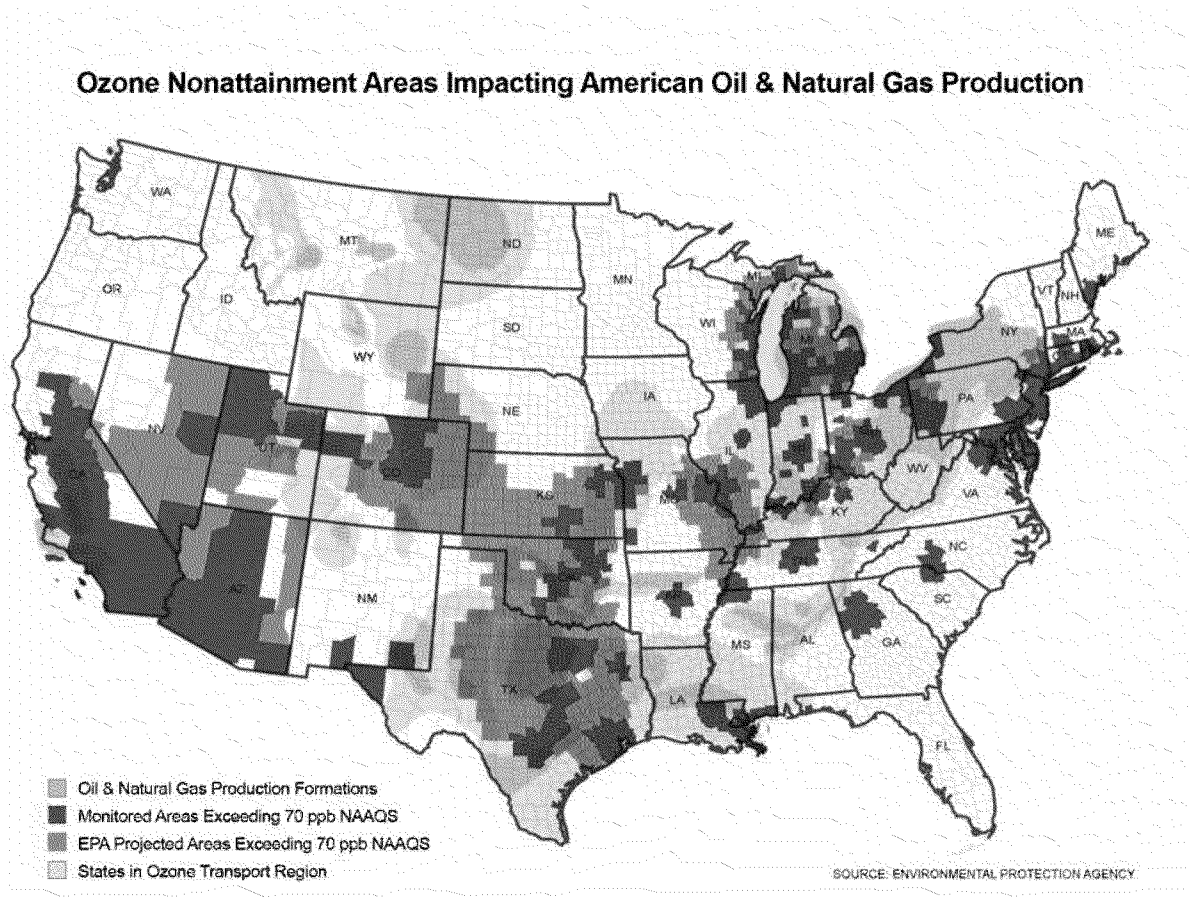
[56] U.S. Environmental Protection Agency, Control Techniques Guidelines for the Oin and Natural Gas Industry (Draft), (Aug. 2015) *available at* http://www3.epa.gov/airquality/oilandgas/pdfs/og_ctg_draft_081815.pdf.



While oil and natural gas production facilities have always been subject to RACM in current Ozone nonattainment areas, the CTG proposal changes the regulatory framework significantly. Part D of the CAA provides for states to impose RACM on existing stationary sources as a part of the requirements to demonstrate attainment or Reasonable Further Progress toward attainment. These RACM requirements, however, apply to stationary sources of a specific size depending on whether an Ozone nonattainment area is classified as Moderate, Serious, Severe or Extreme. Therefore, regulation of existing oil and natural gas production facilities depended both on their size and the status of the Ozone nonattainment area. The CTG proposal in general does not set emissions thresholds for its application. As such, for large or small producers, or large or small emitters, the regulatory burden will apply and will apply far more broadly.

As EPA states with regard to the proposed Subpart OOOOa, "we [EPA] believe that the industry can bear . . . and survive."[57] However, no broad analysis of the collective impact of the CTG proposal on American oil and natural gas production in the context of the revised Ozone NAAQS has been done. Such an analysis should be done for several pertinent reasons.

[57] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,629 (Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60).

1. Ozone has consistently been the most difficult primary NAAQS for certain areas to meet. The following figures demonstrate the reality of Ozone NAAQS nonattainment. Figure 1 presents EPA's assessment of the areas of the country that fail to meet the 1997 Ozone NAAQS of 84 ppb (8 hour). Figure 2 presents EPA's assessment of the areas of the country that will fail to meet the current Ozone NAAQS of 75 ppb (8 hour) in 2020. Figure 3 presents EPA's assessment of its revised Ozone NAAQS by 2025.

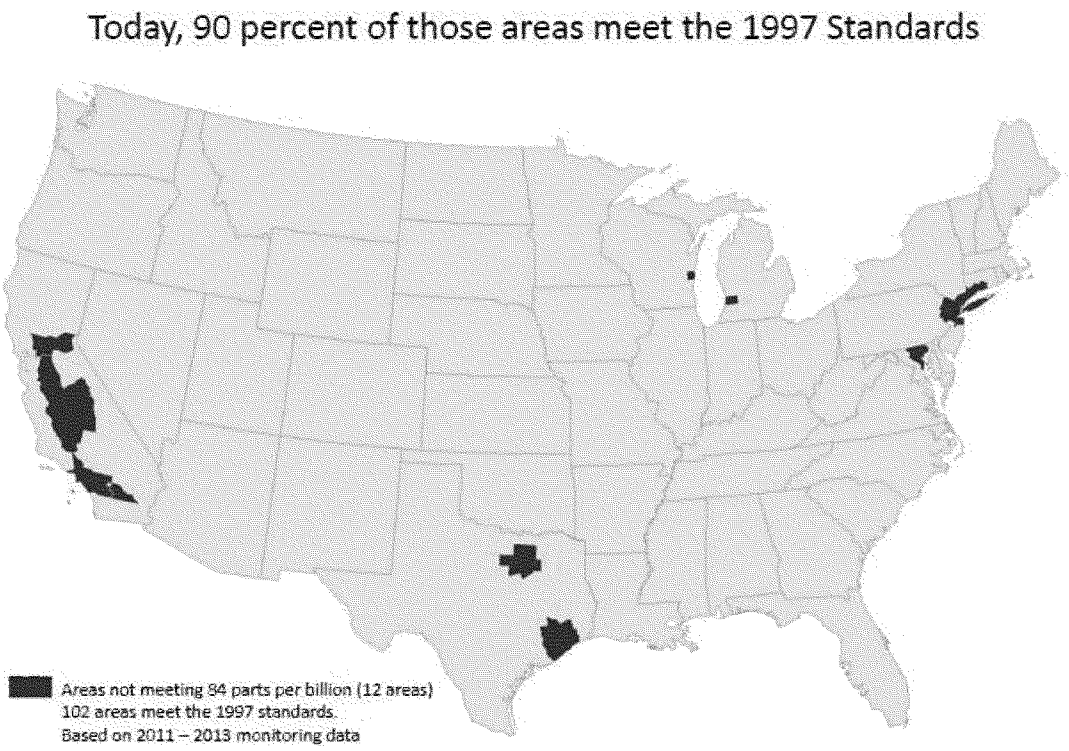


Figure 1

Source: Environmental Protection Agency

Counties with Monitors Projected to Violate the 2008 8-Hour Ozone Standard of 0.075 parts per million (ppm) in 2020

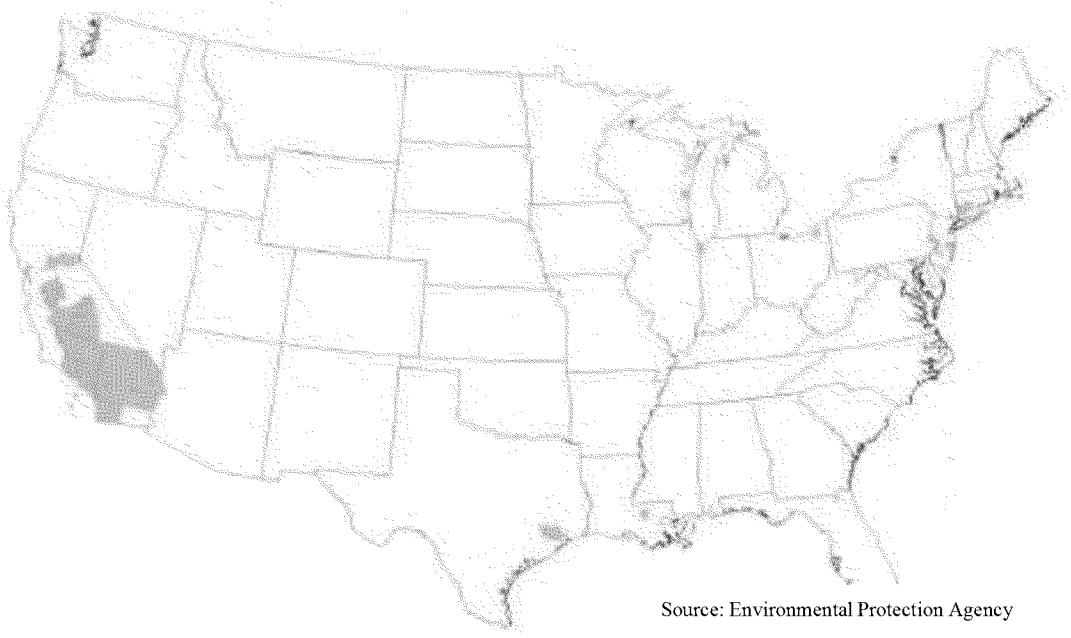


Figure 2

Source: Environmental Protection Agency

Figure 3

Source: Environmental Protection Agency

EPA's analysis shows that there are certain areas of the country that are enduring Ozone NAAQS nonattainment areas – areas that cannot meet any Ozone NAAQS that has been promulgated. The same areas that failed to meet the 1997 Ozone NAAQS and the 2008 Ozone NAAQS also will fail to meet the proposed NAAQS by 2025 and, realistically, any time until well after 2030. What this means is that EPA's claimed health benefits from the proposed NAAQS will not occur in these enduring nonattainment areas.

Equally important, the regulatory requirements in these enduring nonattainment areas will be no different under the proposed NAAQS than they are under the current NAAQS. These areas are subject to regulation under Part D – Plan Requirements for Nonattainment Areas of the CAA.

Part D was created in the 1990 CAA amendments. It creates a series of specific minimum requirements for each area in Ozone NAAQS nonattainment initially based on the area's ozone monitoring values relative to the Ozone NAAQS. Areas are classified as Marginal, Moderate, Serious, Severe and Extreme. Each classification is given a specific time frame in which to attain the Ozone NAAQS. Importantly, if an area fails to meet the NAAQS in its allotted compliance period, it is reclassified to a

higher classification, required to implement the mandatory requirements and given an extension of time to meet the NAAQS. Part D requirements were initiated after the 1990 CAA amendments with attainment dates ranging from 1993 to 2010. Even with attainment date extensions, these dates have passed.

The significant impact of Part D is that perpetual nonattainment eventually produces a baseline of regulations and requirements of additional annual percentage reductions. Since these areas have been subject to Part D for 25 years, their future regulatory requirements will be the same iterative percentage reductions under the current NAAQS as the new one. Adopting the revised NAAQS will produce the same regulatory requirements for these areas as the current NAAQS.

2. EPA has stated in its support documents for its revised Ozone NAAQS that:

> Existing and proposed federal rules . . . will help states meet the proposed standards by making significant strides toward reducing ozone-forming pollution. EPA projections show the vast majority of U.S. counties with monitors would meet the proposed standards by 2025 just with the rules and programs now in place or under way.

Consequently, these national, federal requirements will essentially protect the overwhelming number of areas that would be placed in Ozone NAAQS nonattainment by the lower NAAQS without any of the local actions that would be required from such categorization.

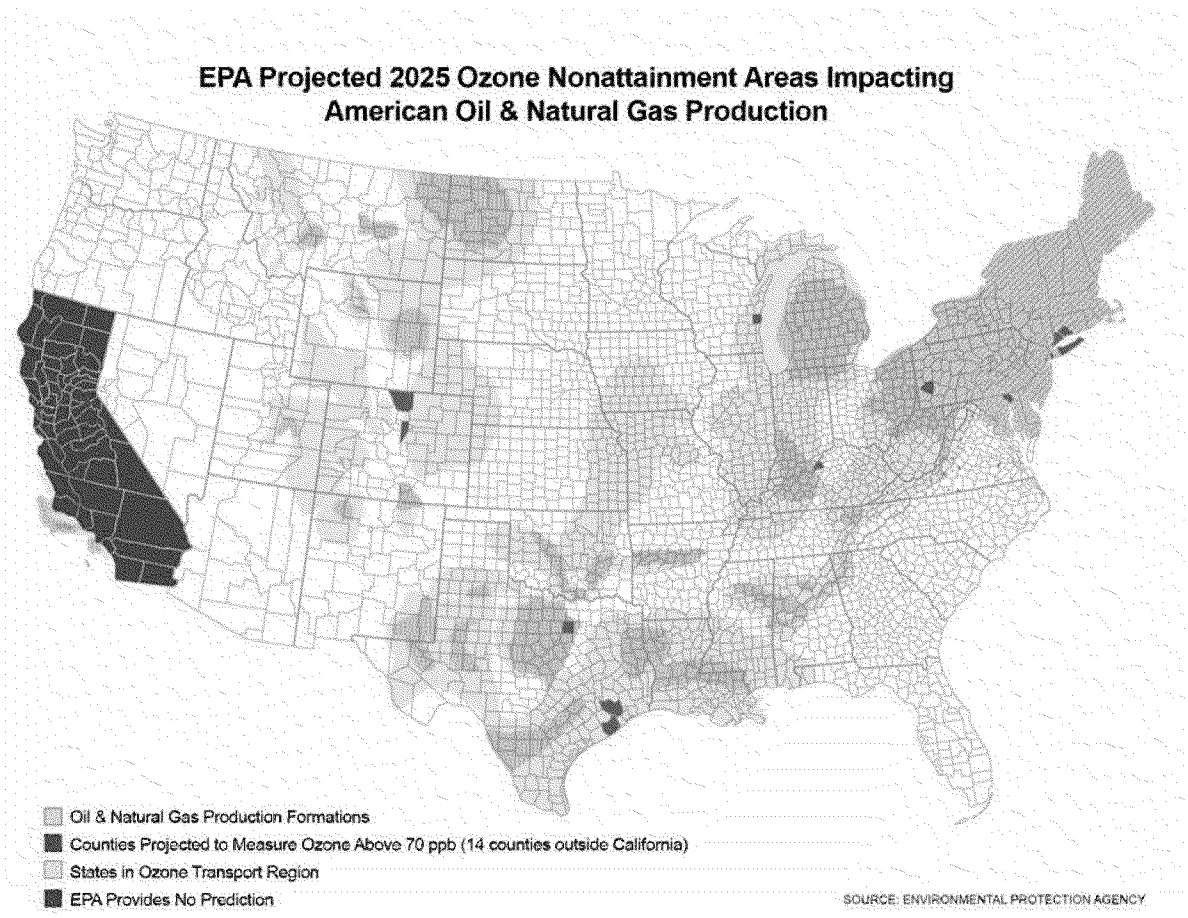
For these areas that EPA projects would reach attainment using only national, federal mandates regardless of the NAAQS, promulgating the lower NAAQS will compel them to be subject to the requirements of Part D of the CAA. Because Part D imposes a series of minimum requirements, the revised NAAQS will impose emission controls on new sources in those areas, including offsets, which will be burdensome, cost ineffective and unnecessary since EPA believes these areas would reach attainment using only its national regulations.

Once an area becomes subject to Part D, minimum requirements are mandated. For example, all new construction must not only comply with rigorous emissions controls, but all remaining emissions must be "offset" by reductions in existing emissions that are not otherwise regulated. Many of the areas that would fall into initial Ozone NAAQS nonattainment but would later attain the NAAQS are largely rural or with smaller municipalities. These areas will likely have limited existing emissions sources to regulate. These areas will face either an effective construction prohibition or the choice of shutting down existing operations that employ current workers.

3. The proposed oil and natural gas production CTG get pulled into this murky process. Enduring Ozone nonattainment areas already are a possible target for RACM requirements, but those requirements are predicated on the size of the source and

therefore not imposed without consideration of their impact on emissions and with localized consideration of cost effectiveness. For the newly captured Ozone nonattainment areas that EPA believes will meet the revised Ozone NAAQS using national, federal regulations – an assessment made without the inclusion of the proposed CTG – the application of the proposed CTG is unnecessary to reach attainment. However, because the CTG would be applied and would be applied to such small sources, these reductions are also removed from the possible pool of emissions that could be managed as a part of emissions offsets needed to build new facilities. In many of these areas, new facilities are likely new oil and natural gas wells. Consequently, the impact of the CTG would be to limit new production.

For these reasons, EPA must fully assess the energy, economic and environmental consequences of implementing the proposed CTG in the context of the revised Ozone NAAQS. IPAA/AXPC believes that EPA cannot justify the current CTG at this time. As the following graphic shows, EPA projects that only a few areas will remain in Ozone nonattainment in 2025.



This projection is based on regulatory actions taken without the proposed CTG. It demonstrates that the CTG is not essential to Ozone NAAQS attainment. Certainly, in some enduring

nonattainment areas some oil and natural gas production facilities would be subject to RACM, but these decisions would be based on local conditions and the economic circumstances of the oil and natural gas production operations in those areas. Finalizing the proposed CTG would make all oil and natural gas production operations subject to the CTG without a compelling need – based on EPA's own projections of Ozone attainment – and without the opportunity to assess local need. Moreover, it would eliminate possible actions that could facilitate new construction as offsets and thereby unnecessarily threaten economic growth in these areas. If EPA finalizes an oil and natural gas production CTG without assessing all of these consequences, it can only be viewed as arbitrarily ignoring significant implications that EPA has the responsibility to address.

It is pertinent to address the methane emissions issue here, too. While this proposed oil and natural gas production CTG is written to manage VOC emissions, it has been proposed as a part of the Administration's Climate Action Plan and is partly a surrogate for methane emissions management. However, as IPAA/AXPC stated earlier in these comments, the requirements already in regulation under Subpart OOOO more than achieve the Administration's methane reduction targets for the oil and natural gas production segment of the Climate Action Plan. This CTG needs to be addressed on its merits and its consequences weighed with regard to Ozone NAAQS nonattainment.

In addition to these general concerns, IPAA/AXPC has issues associated with the specific CTG proposals.

A. Fugitive Emissions

IPAA/AXPC identified a series of specific issues in the discussion of the Subpart OOOOa proposal that apply in the CTG context as well. Here, this discussion will focus on some of those issues and raise others that arise because of its application to existing sources.

First, EPA's approach to a fugitive emissions program fails to recognize the nature of these emissions at oil and natural gas production facilities. This emissions arena is characterized by "fat tail" emissions where a few components within the facility account for the overwhelming amount of the releases. At the same time, it is an arena where the appropriate regulatory formulation is still being identified. Several states have initiated fugitive emissions programs, and each differs from the others. Clearly, it will take some time to determine the efficacy of approaches in order to assure that a cost-effective program is defined. Into the middle of this uncertainty, EPA proposes the most burdensome approach with expectations of success that are not founded on experience. Rather than bullying its way into the arena, EPA has two far better approaches it could take. One is to watch the emerging state programs and use their results to design a program. The second is to work with industry to develop voluntary initiatives that would reflect the emerging understanding of fugitive emissions patterns. IPAA/AXPC believes that EPA should withdraw its fugitive emissions proposals until more is known about the best approaches to managing them.

Second, initial experiences with state programs are revealing that once a "fat tail" source is corrected through appropriate maintenance, its emissions do not increase – at least for long periods of time. In fact, because the current state programs have been operating for a limited

amount of time, some sources that have been fixed have not needed a second action. However, like its NSPS proposal, EPA creates a framework of shifting monitoring frequencies that are not justified based on experience. If EPA continues to pursue its proposal, it should rely on an annual inspection cycle to create a stable planning framework.

Third, when states have or create their own fugitive emissions programs, these programs should be considered as meeting CTG requirements.

Fourth, IPAA/AXPC supports excluding smaller facilities (e.g., marginal wells producing 15 barrels/day of oil equivalent or less) from the scope of the fugitive emissions program and believes that facilities that are initially included in any program should be excluded when their production falls below the threshold. IPAA/AXPC agrees that a fugitive emissions program should not apply to facilities with only a single wellhead. Further, EPA bases its program on a "model" facility with an expected number of components. IPAA/AXPC recommends that sites with less than the model facility components should be excluded from the fugitive emissions program.

Fifth, IPAA/AXPC believes that EPA is understating the costs of its fugitive emissions program and overstating its benefits. As IPAA/AXPC stated in discussing the NSPS proposal, EPA relies on technologies that are costly while not demonstrating those technologies are necessary to achieve benefits. For example, EPA is enamored with the use of specific OGI technologies. EPA places far too much faith that OGI can detect emissions accurately. Moreover, by using this technology, it drives compliance costs excessively. As described earlier, compelling the expenditure of more than $100,000 per FLIR camera is a burden not easily borne by existing operations where production rates are lower than new facilities in today's economic climate. EPA's proposal immediately demands confidence that the expenditure will result in substantial savings. However, nothing in EPA's CTG proposal demonstrates that it has realistically evaluated the effectiveness of this program at existing facilities. Past CTG have provided a threshold cost effectiveness test that is absent here. Rather, EPA calculates costs/ton of reduced emissions for various technologies whether they are appropriate as RACT. For example, EPA rather cavalierly discounts the costs/ton for oil wells – which exceeds $10,000/ton in all of its cases and reaches more than $25,000/ton in some – by stating "[t]he cost of control for natural gas well sites and gathering and boosting stations is considered to be reasonable."[58] Implicitly, the cost of control for oil well sites is not reasonable, but EPA proposes the same RACT requirements. IPAA/AXPC believes that oil well sites should be excluded from the CTG and that any natural gas well site program needs to be reconstructed to focus on high-emitting sources with flexibility to use more cost-effective approaches.

EPA errs in locking in current technologies, like OGI, that may well be far less cost-effective than new approaches that may arise as state programs learn from experience. As with the NSPS proposal, EPA needs to allow the development of knowledge in managing these fugitive emissions before framing a rigid and ineffective mandate.

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[58] U.S. Environmental Protection Agency, Control Techniques Guidelines for the Oin and Natural Gas Industry (Draft), (Aug. 2015) *available at* http://www3.epa.gov/airquality/oilandgas/pdfs/og_ctg_draft_081815.pdf.

B. Storage Vessels

There is a vast difference between regulating new storage vessels and existing ones. Specifically, a new vessel can be designed to accommodate a vapor collection system whether it is for recovery or combustion. Once built, both the vessel and the system can be maintained to assure that they are operating effectively and safely. Because a CTG addresses existing facilities, there is no certainty that the storage vessels will be capable of accepting the equipment needed to capture vapors. Vessels deteriorate over time despite maintenance, and if the structural integrity is compromised by the additional equipment, a safety issue arises.

In this context, and more generally, EPA's cost estimates must be scrutinized. EPA suggests that vapor recovery units (VRU) or combustors can be considered RACT for vessels with emissions of 6 tons/year or more. However, if a storage vessel cannot safely operate with additional equipment, the entire vessel would have to be replaced, if replacement is even economically feasible. EPA does not consider this situation in calculating its cost effectiveness, but it should because the consequences would considerably change the determination of RACT. For example, at some facilities under current economic conditions, the cost of a new storage vessel would not be economically feasible based on the facility's production rates.

Additionally, IPAA/AXPC believes that marginal well facilities should be excluded from the scope of the CTG. Clearly, the burden of adding capture equipment – and certainly the burden of replacing storage vessels – cannot be readily borne by marginal well operations. EPA relates emissions to production rates as shown in the following table. The information contained in the table shows that marginal well operations fall well below even EPA's presumed RACT threshold of 6 tons/year. Consequently, rather than deliberate on emissions estimates, the straightforward approach to defining the scope of the storage vessel CTG would be to exclude marginal well operations. Similarly, when a facility's production levels fall to the point when it becomes a marginal well operation, it should no longer be required to operate any vapor capture system. Beyond that, there should be the opportunity – like there is in Subpart OOOO – to demonstrate that uncontrolled emissions levels are below 4 tons/year to obtain an exclusion from the storage vessel CTG.

Table 4-2. Average Oil and Condensate Production and Storage Vessel Emissions per Production Rate Bracket[13]

Production Rate Bracket (BOE/day)[a]	Oil Wells		Gas Wells	
	Average Oil Production Rate per Oil Well (bbl/day)[b]	Crude Oil Storage Vessel VOC Emissions (tpy)[c]	Average Condensate Production Rate per Gas Well (bbl/day)[b]	Condensate Storage Vessel VOC Emissions (tpy)[c]
0-1	0.385	0.083	0.0183	0.038
1-2	1.34	0.287	0.0802	0.168
2-4	2.66	0.570	0.152	0.318
4-6	4.45	0.953	0.274	0.573
6-8	6.22	1.33	0.394	0.825
8-10	8.08	1.73	0.499	1.04
10-12	9.83	2.11	0.655	1.37
12-15	12.1	2.59	0.733	1.53
15-20	15.4	3.31	1.00	2.10
20-25	19.9	4.27	1.59	3.32
25-30	24.3	5.22	1.84	3.85
30-40	30.5	6.54	2.55	5.33
40-50	39.2	8.41	3.63	7.59
50-100	61.6	13.2	5.60	11.7
100-200	120	25.6	12.1	25.4
200-400	238	51.0	23.8	49.8
400-800	456	97.7	44.1	92.3
800-1,600	914	196	67.9	142
1,600-3,200	1,692	363	148	311
3,200-6,400	3,353	719	234	490
6,400-12,800	6,825	1,464	891	1,864
> 12,800[d]	0	0	0	0

Minor discrepancies may be due to rounding.
[a] BOE=Barrels of Oil Equivalent
[b] Oil and condensate production rates published by EIA. "US Total Distribution of Wells by Production Rate Bracket." http://www.eia.doe.gov/pub/oil_gas/petrosystem/us_table.html.
[c] Oil storage vessel VOC emission factor = 0.214 tpy VOC/bbl/day. Condensate storage vessel VOC emission factor = 2.09 tpy/bbl/day.
[d] There were no new oil and gas well completions in 2009 for this rate category. Therefore, average production rates were set to zero.

C. Pneumatics

The proposed CTG addresses both pneumatic controllers (regulated for new sources under Subpart OOOO) and pneumatic pumps (proposed for new source regulation under Subpart OOOOa). IPAA/AXPC believes that these requirements should not apply to marginal well facilities. In addition, EPA needs to clarify that the CTG does not apply to pneumatics with continuous emissions less than 6 scf/h.

D. Compressors

The proposed CTG addresses a subset of compressors as follows:

(a) *Centrifugal compressors*. Each centrifugal compressor, which is a single centrifugal compressor using wet seals located between the wellhead and point of custody transfer to the natural gas transmission and storage segment. A centrifugal compressor located at a well site, or an adjacent well site and servicing more than one well site, is not a source subject to VOC requirements under this rule.

(b) *Reciprocating compressors*. Each reciprocating compressor located between the wellhead and point of custody transfer to the natural gas transmission and storage segment. A reciprocating compressor located at a well site, or an adjacent well site and servicing more than one well site, is not a source subject to VOC requirements under this rule.[59]

However, it makes no distinction based on the size of the facility. IPAA/AXPC believes that the CTG should not apply to marginal well facilities and that its application should be terminated when a facility becomes a marginal well operation.

E. Conclusion

The proposed oil and natural gas production CTG should be withdrawn. It fails to provide a technological analysis based on the fundamental basis for RACM. Instead, it arbitrarily applies the new source BSER requirements to existing sources without any realistic analysis of whether these technologies are reasonably available and applicable as RACM. It largely ignores the differences between the oil and natural gas production industry and other industry segments that require recognition of the significant differences across the industry in the size and scope of operations. These differences dramatically impact the economic implications of controls. While a portion of the CTG proposal creates an application threshold that excludes marginal oil and natural gas wells, a similar provision should apply to all of its provisions but does not. Finally, with the revision to the NAAQS for Ozone, new areas – many of which are rural in nature – will be subjected to the RACM created by the proposed CTG. Not only has EPA failed to address this issue in the CTG proposal, EPA's own assessment of the nation's ability to attain the Ozone NAAQS demonstrates that this CTG is both unnecessary and counterproductive.

VI. Comments on Source Determination Proposal

The EPA is soliciting comments on a potential revision of the process for determining the nature of a source for certain emissions units in the oil and natural gas sector. Among these are facilities that produce oil and natural gas. The proposal addresses CAA new source permitting

[59] U.S. Environmental Protection Agency, Control Techniques Guidelines for the Oin and Natural Gas Industry (Draft), (Aug. 2015) *available at* http://www3.epa.gov/airquality/oilandgas/pdfs/og_ctg_draft_081815.pdf.

under the Prevention of Significant Deterioration (PSD) program, the Nonattainment New Source Review (NNSR) program, and Title V permitting program. IPAA/AXPC believes that establishing certainty regarding source determinations provides an important benefit to the permitting process. Below are a series of recommendations and comments that address IPAA/AXPC's concerns regarding the EPA proposal. However, at the outset, IPAA/AXPC would observe that, while there have been some specific issues associated with past interpretations of oil and natural gas production sources, the issue of source determination applies to all stationary sources.

Similarly, this issue of changing the structure of source determination must conform to the constraints of past interpretations. As EPA characterizes its actions on source determination in the Federal Register:

> Adhering to the statutory language in CAA section 111(a)(3), we have defined the term ''stationary source'' to mean ''any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant'' [40 CFR 52.21(b)(5); 40 CFR 51.165(a)(1)(i); 40 CFR 51.166(b)(5)]. We have then further defined the four statutory terms ''building, structure, facility, or installation'' collectively in our NSR regulations to mean ''all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control),'' where the ''same industrial grouping'' refers to the two-digit Standard Industrial Classification code [40 CFR 52.21(b)(6); 40 CFR 51.165(a)(1)(ii); 40 CFR 51.166(b)(6)]. These three regulatory factors: (1) Same industrial grouping; (2) location on contiguous or adjacent properties; and (3) under the control of the same person or persons must be evaluated on a case-by-case basis for each permitting decision.[60]

EPA needs to confirm clearly that its actions on source determination operate within this larger framework.

EPA presents two approaches to source determination. These comments focus principally on Option A – defining the source based on proximity – because IPAA/AXPC strongly opposes Option B, which includes exclusively functionally interrelated equipment.

Much of the history of the source determination question for oil and natural gas production occurred prior to the significant shift in development to shale formations and the evolution of technology that has been so successfully applied to produce those resources. These changes in the nature of oil and natural gas development alter the physical aspects of producing operations. Oil and natural gas production operations have moved from a framework where numerous vertical wells were drilled in developing a resource play to a framework where development relies on significant horizontal legs providing access to the resources. Correspondingly, a typical well site will now include numerous individual wells ranging from six

[60] Source Determination for Certain Emission Units in the Oil and Natural Gas Section, 80 Fed. Reg. 56,579, 56,580 (Sept. 18, 2015) (to be codified at 40 C.F.R. pts. 49, 51, 52, *et al.*).

to twelve to, sometimes, twenty. As a result, the concepts that drove past EPA actions to consider source determination approaches that aggregate multiple well sites together – essentially the "daisy chaining" concept the EPA seeks to avoid in this proposal – no longer reflect the industry's common practices.

Similarly important, the regulatory structure that affects oil and natural gas production has changed significantly. Since the beginning of 2015, the industry has been subjected to NSPS requirements on completions of new hydraulically fractured natural gas wells, pneumatic controllers, and storage vessels. Currently pending are proposals to regulate new hydraulically fractured oil wells, pneumatic pumps, compressors, and fugitive emissions. These regulations apply to virtually every new well site and manage the emissions. Consequently, the issue of emissions management is essentially settled, and the principle issue of the source determination rule will be the regulatory burden for the specific permitting programs of the proposals – PSD, NNSR, and Title V. Because emissions are not the driving factor in the decision, EPA should move toward limiting burdens rather than expanding them.

These factors shape our view that Option A – *Define Source Based on Proximity (Similar to the NESHAP)* – is the far better framework to address source determination. As EPA characterizes Option A:

> Under the first, and currently preferred, option for which the EPA is taking comment, the EPA proposes to define "adjacent" such that the source is similar to that in the NESHAP for this industry, Subpart HH, National Emissions Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities (40 CFR 63.760). Under this option, the "source" for oil and natural gas sector activities is presumed to be limited to the emitting activities at the surface site, and other emitting activities will be considered "adjacent" if they are proximate. Thus, under this first option, two or more surface sites must be considered as a single source if they share the same SIC code, are under common control, and are contiguous or are located within a short distance of one another.
>
> We prefer this option because we believe that a definition that centers on a surface site is familiar to the industry and the regulators because of the current NESHAP requirements, so it will streamline permitting. We also believe that a definition focused on a surface site most closely represents the common sense notion of a plant for this industry category. Surface sites that are not in close proximity to one another may be on a separate lease which may not align with the common sense notion of a single plant. In addition, we believe that this definition is consistent with Congress' intent, at least as they expressed it with regard to [hazardous air pollutants (]HAPs[)], as discussed previously.[61]

IPAA/AXPC essentially agrees with EPA's characterization and its rationale. Where IPAA/AXPC differs relates to an issue where EPA seeks specific comments – whether it is

[61] *Id.* at 56,586-7.

appropriate to establish a specific distance within which to consider multiple surface sites as a single source, and if so, what that distance should be. EPA is proposing a distance of a ¼ mile. IPAA/AXPC believes that EPA should, instead, adhere to the approach it has used in the NESHAP formulation. EPA should base its final factor on sites being contiguous in addition to sharing the same SIC Code and being under common control.

This approach improves on the proximity concept because it avoids picking an arbitrary distance, such as a ¼ mile. Moreover, it readily addresses another issue that EPA raises – "daisy-chaining". EPA is correct to be concerned that linking one site to another through its proximity invites the opportunity to link a third or a fourth or more sites solely on the basis of proximity. There is no value in daisy-chaining since the individual sites are each subject to the emissions management requirements under the appropriate NSPS or whatever additional regulations apply.

If, however, EPA persists in utilizing a specific distance, it is correct that some states use ¼ of a mile as a bright line to exclude needless source determinations for facilities outside that distance. However, most states then conduct a case-by-case source determination for facilities inside the ¼ mile based on proximity and the "common sense notion of a plant." Therefore, if EPA persists in utilizing a specific distance, it should follow the example of most of the oil and gas producing states and use the bright line to trigger a case-by-case source determination inside that bright line. It is also important to recognize that using an arbitrary distance raises questions of daisy-chaining, and EPA should have language either in the rule or the preamble to state that facilities should not be daisy-chained. EPA has also asked from where a specific distance should be measured. We suggest that the distance be based on the center of the new source triggering the source determination to the center of any nearby facility.

EPA should reject Option B – *Define Source To Include Exclusively Functionally Interrelated Equipment.* Option B essentially invites daisy-chaining. It creates the opportunity to link multiple facilities regardless of the distances between them. For example, as EPA states "[e]xclusive functional interrelatedness might be shown by connection via a pipeline or other means, because of the physical connection between the equipment."[62]

This characterization largely parrots the circumstances in the *Summit Petroleum Corp. v. U. S. Environmental Protection Agency*, 690 F.3d 733 (6th Cir. 2012) case. In this case, as EPA describes in its discussion of these proposals:

> In the decision, the Court said that the EPA's use of interrelatedness in determining whether sources were "adjacent" is unreasonable and contrary to the plain meaning of the term as currently used in EPA's regulations. The two judges in the majority found that the term "adjacent" was unambiguous and its plain meaning related only to physical proximity, and thus could not include

[62] *Id.* at 56,587.

> consideration of functional interrelatedness. The EPA sought rehearing of the Court's decision, but that request was denied.[63]

Why EPA would suggest moving back toward this judicially rejected approach is unfathomable. More importantly, it does not create any environmental benefits, because, as stated above, the existence of the current and proposed EPA oil and natural gas production regulatory requirements would apply to the separate facilities. Option B would only create substantially expanded regulatory burdens.

In conclusion, IPAA/AXPC believes that EPA's appropriate choice is a modified Option A relying on the use of a contiguous border to aggregate sources if aggregation is appropriate. To facilitate clarity on this issue, IPAA/AXPC suggests adding the following definition where appropriate in the Code of Federal Regulations:

> "Contiguous or adjacent properties" mean surface areas with an affixed building, structure, facility or installation including permanently graded or cleared areas for such building, structure, facility or installation, that share an edge/boundary, physically touch, and are adjoining or physically abutting.

CONCLUSION

IPAA/AXPC values the opportunity to comment on the above referenced regulatory proposals. The oil and natural gas production industry has worked closely with EPA over the past decade to promulgate reasonable, cost-effective regulations on air emissions. While industry objected to various aspects of the Subpart OOOO regulations controlling VOC emissions from various sources within the oil and natural gas sector, through the administrative reconsideration process and revisions to Subpart OOOO, many of the issues have been addressed without protracted and costly litigation. The proposed Subpart OOOOa and CTG regulations seem to represent a departure from a willingness on the part of this Administration to promulgate reasonable, cost-effective, and most importantly, needed regulations.

EPA's pollutant of concern is methane. Unlike other "pollutants" and other industrial "products," methane is not treated as a pollutant in the oil and natural gas industry – it is a valuable product. Unlike other industries, market forces are constantly at work to minimize what EPA views as a pollutant and our industry views as a product. The fact methane is a primary constituent of what this industry produces explains, in large part, why emissions from the exploration and production segment of the oil and natural gas sector have gone down while production has gone up (see Section I above). In reality, most of the reductions are a function of voluntary measures by producers to retain/capture methane or state regulatory programs where oil and natural gas production has increased dramatically in the past decade.

A central theme to IPAA/AXPC's comments is that the proposed Subpart OOOOa regulations are unnecessary and the CTG proposed regulations are, at best, premature. The

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[63] *Id.* at 56,584.

EPA's legal foundation and basis for the proposed Subpart OOOOa and CTG regulations are dubious and invite legal challenge. It is arbitrary and capricious for EPA to base its proposed methane regulations (NSPS and CTG) on a model that predicts the social cost of methane. The irony is that EPA can accomplish a majority of its goals with modifications to existing regulations and attainment of the current Ozone NAAQS. The cost of EPA's proposed NSPS and CTG is not justified.

A. Proposed Methane New Source Performance Standards Summary Comments

- Regulations cannot be based on what EPA "believe[s]" "the industry can bear . . . and survive."[64]
- EPA's "consistency," patchwork "endangerment finding," and global warming concerns do not warrant direct regulation of methane emissions from the oil and natural gas sector.
- EPA's failure to evaluate the cost associated with the potential regulation of existing sources under Section 111(d) is arbitrary and capricious.
- States (and operations within those states) should not be penalized for taking early action to address emissions from the oil and natural gas sector, i.e., compliance with essentially equivalent state programs should be deemed compliance with the finalized Subpart OOOOa regulations.
- EPA's focus on fugitive emissions at well sites and compressor stations is premature and not supported by reliable cost/benefit data.
    - EPA's request for input and comment on numerous aspects of the proposed regulations is indicative of an issue that regulators and industry are still learning to address.
    - The "corporate fugitive management program" is a logical way to address the issue, but regulators and companies need time to determine what such a program should look like.
    - EPA's cost-effectiveness analysis for the proposed regulatory package suffers from shortcomings on both sides of the equation: for the reasons set forth above, the costs are understated and the benefits are overstated or unsupported.
    - States with the most active shale plays are learning valuable information on how to reduce fugitive emissions. EPA should not rush to judgement and establish federal standards that will be inconsistent, duplicative and potentially unnecessary because of state efforts.
    - For the reasons stated above, EPA should not dictate a specific technology for determining "leaks." OGI may be appropriate in certain instances, but EPA's selection of one technology is arbitrary and capricious.
    - EPA's proposed approach to determining the frequency of LDAR surveys based on percentage of leaking components demonstrates its lack of understanding of the issues associated with fugitive emissions. As discussed above, EPA's

[64] Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56,593, 56,629 (Sept. 18, 2015) (to be codified at 40 C.F.R. pt. 60)

proposed regulations would impose significant costs on the industry with dubious environmental benefit.
  - IPAA/AXPC supports EPA's proposed exclusions but seeks clarification that the 15 boe exclusion also serves as an off ramp to reduce the burden of the proposed regulations.
- Oil well RECs are not the same as RECs at natural gas wells.
  - IPAA/AXPC questions if EPA has documented new information to justify the cost-effectiveness of RECs on oil wells. The economics and engineering limitations at oil wells are different than natural gas wells, and EPA has failed to adequately differentiate between the two and justify RECs at oil wells.
  - IPAA/AXPC supports the limited exclusions to the oil well REC requirements but suggests clarification as to the requirements associated with noncombustible gas.
- EPA's proposed regulation of pneumatic pumps fails to adequately reflect the complexity, cost, and safety issues associated with sending captured natural gas to an existing combustion device. IPAA/AXPC believes that if the costs associated with such complexity were adequately reflected, the proposed regulations would not be cost effective.
- IPAA/AXPC supports EPA's proposed regulations that indicate the compressor rules do not apply to compressors at the wellsite but requests clarification that a similar exclusion applies under the proposed CTG.

B. Proposed CTG Summary Comments

- The CTG regulations must be based on a technological analysis for RACM instead of arbitrarily transposing new source BSER requirements to existing sources.
- The CTG regulations need to recognize differences across the oil and natural gas production industry that recognize size and scope of operations.
  - Marginal oil and natural gas production facilities should be excluded from all of the CTG.
- The CTG regulations must be based on their applicability to manage VOC emissions in Ozone NAAQS nonattainment areas.
  - EPA has failed to provide justification for the CTG as necessary for Ozone NAAQS attainment and, in reality, EPA's projections of Ozone NAAQS attainment in 2025 demonstrates the CTG are not necessary.
  - Implementation of the CTG in the absence of a demonstrated need is counterproductive and unnecessarily constrains economic growth.

C. Proposed Point Source Determination Summary Comments

- EPA should adopt a Source Determination definition that adheres to the approach it has used in the NESHAP formulation. EPA should base its final factor on sites being contiguous in addition to sharing the same SIC Code and being under common control.
- EPA should reject the use of functionally related equipment as a consideration in adopting revisions to its Source Determination definition.

If EPA has any questions or concerns, please do not hesitate to contact us.

Sincerely,

Lee Fuller
Executive Vice President
Independent Petroleum Association of America

V. Bruce Thompson
President
American Exploration & Production Council

Cc: Janet McCabe, EPA
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ATTACHMENT A

ACRONYM INDEX

AAPL	American Association of Professional Landmen
AEO	Annual Energy Outlook
AESC	Association of Energy Service Companies
ANGA	America's Natural Gas Alliance
API	American Petroleum Institute
AR5	Fifth Assessment Report
AVO	audio/visual/olfactory
AWEA	American Wind Energy Association
AXPC	American Exploration and Production Council
boe	barrels of oil equivalent
BSER	best system of emission reductions
CAA or Act	Clean Air Act
CMSA	Consolidated Metropolitan Statistical Area
CTG	Control Technique Guidelines
EIA	Energy Information Administration
FLIR	forward looking infrared
GHG	Greenhouse Gas
GOR	gas-to-oil ratio
HAPs	hazardous air pollutants
IADC	International Association of Drilling Contractors
IAGC	International Association of Geophysical Contractors
IPAA	Independent Petroleum Association of America
IPCC	Intergovernmental Panel on Climate Change
LDAR	leak detection and repair

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NAAQS	National Ambient Air Quality Standards
NCA3	2014 National Climate Assessment, Climate Change Impacts in the United States
NESHAP	National Emission Standards for Hazardous Air Pollutants
NGO	non-governmental organizations
NNSR	Nonattainment New Source Review
NSPS	New Source Performance Standards
NSWA	National Stripper Well Association
NYMEX	New York Mercantile Exchange
OGI	optical gas imaging
OTR	ozone transport regions
PESA	Petroleum Equipment & Services Association
PSD	Prevention of Significant Deterioration
RACM	Reasonably Available Control Measures
RACT	reasonably available control technology
RECs	reduced emissions completions
RIA	Regulatory Impact Analysis
SCADA	supervisory control and data acquisition
SCC	social cost of carbon
SC-CH_4	social cost of methane
SIC	Standard Industrial Classification
SIPs	State Implementation Plans
TSD	Technical Support Document
USG	United States Government
USGCRP	U.S. Global Change Research Program
USOGA	U.S. Oil & Gas Association

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VOC	Volatile Organic Compound
VRU	vapor recovery units
WEA	Western Energy Alliance

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INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

Environmental Issues in the Oil Patch

Lee O. Fuller

Executive Vice President

The environmental regulatory framework for oil and natural gas production has changed dramatically over the past decade at both federal and state levels. Much of this change reflects the growth in American oil and natural gas production resulting from the broad application of hydraulic fracturing and horizontal drilling to open access to shale gas and shale oil reserves. In the late 1990's and early 2000's, while there were a core of environmentalists opposing hydraulic fracturing, there was a counterweight among a number of environmental advocates that wanted to oppose coal combustion. Those groups supported a transition to natural gas as a step toward an acceptable renewal fuels climate management policy – viewing natural gas as a bridge to the ultimate objective.

By the mid-2000's, hydraulically fractured shale gas could be recognized not as a bridge to the future but as a superhighway of sustainable natural gas reserves for both American consumption and exports throughout the world. This reality coalesced environmental advocates and produced a vendetta toward natural gas – and later toward crude oil – targeting suppression of future development and shutdown of existing production. The scope of what is now commonly called the Keep It in the Ground movement is broad and expanding.

With roots in efforts to attack hydraulic fracturing as an unsafe technology – allegations that have been extensively shown to be egregiously baseless – the Keep It in the Ground agenda expanded. It moved to characterize all oil and natural gas production activities – activities that are no different for conventional production than for fracturing production – as fracturing, to imply that "fractured" natural gas is somehow different, to target not only the production of oil and natural gas but its transportation and use, and – more pertinently for the discussion – to expand its opposition to other environmental management issues. This discussion will primarily address air emissions regulatory issues including methane management.

Framing the Issues

To place the current environmental issues in context, it is necessary to review the past. Air emissions from oil and natural gas operations have not historically been a significant regulatory target. Most of the attention prior to the actions by the Obama Administration were directed toward some specific issues – management of poisonous hydrogen sulfide in sour oil or gas production areas, benzene emissions from glycol dehydrators and a few others. Some production operations in urban ozone nonattainment areas are regulated for Volatile Organic Compounds (VOC). But, because historic oil and natural gas production was largely comprised of rural operations from widely dispersed individual wells, the industry emissions profile did not generate aggressive regulatory initiatives at either the state or federal level.

Unconventional shale oil and natural gas production operations changes the perception of the emissions profile. Unconventional production concentrates the emissions potential. First, the use of horizontal drilling means that a single well can be producing from a geographic distance

of a mile or more from the well bore. Second, numerous wells are developed from one site such that any emissions are more concentrated. The issue of emissions perception is important in the context of the regulatory deliberations that are in play because limited analysis exists on the extent of these emissions. Yet, significant regulatory determinations have been made.

These technology changes were taking place at the same time that an array of political and regulatory initiatives was developing.

Initial Actions and Reactions by the Obama Administration

The first of these related to litigation involving the Clean Air Act (CAA) New Source Performance Standards (NSPS) for oil and natural gas production facilities. In January 2009, environmental groups filed an action to compel EPA to act under its CAA mandatory duty to review the oil and natural gas production facilities NSPS. The use of litigation to capture and drive regulatory agendas has been a growing challenge for all federal regulatory agencies. Created in a time when the development of regulations was far less litigious, in the current adversarial climate, agencies cannot realistically complete their regulatory tasks in the time frame envisioned by Congresses of the 1970s. Consequently, they are far more vulnerable to challenges based on failures to meet mandatory deadlines – challenges that are virtually impossible to rebut. Environmental groups use this weak position to attempt to grab control of an agency's regulatory agenda and shift it to their priorities.

In this instance, the CAA requires EPA to consider NSPS revisions for each category of standards every 8 years. EPA has missed this deadline for oil and natural gas production facilities. Unable to defend its position, EPA finalized a consent decree in February 2010 to propose regulations or a decision not to propose regulations in 2011 and finalize action in 2012.

Second, as EPA began its process, the Obama Administration began to embrace the environmentalist opposition to American oil and natural gas production. By early 2012, the Obama Administration had initiated actions by ten different agencies to federalize regulation of American oil and natural gas production. Then, as the election approached, in April 2012, the Obama Administration announced the creation of its Interagency Working Group to Support Safe and Responsible Development of Unconventional Domestic Natural Gas Resources. This Working Group allowed the Obama Administration to manage the diverse agency efforts that had been initiated reflecting the growing importance of American natural gas development in the economy. By the end of 2012, the intensity of federalizing oil and natural gas production regulation had diminished with three regulatory initiatives still active – EPA guidance to restrict the use of diesel fuel in hydraulic fracturing under the Safe Drinking Water Act, Bureau of Land Management (BLM) drilling regulations affecting hydraulically fractured wells, and the EPA CAA NSPS regulations under the consent decree.

Third, while the debate in the early years of the Obama Administration on climate change and greenhouse gases largely focused on carbon dioxide and on large utility coal-fired electric generators, there were elements that targeted oil and natural gas production. One was the ongoing Gas STAR voluntary reduction program that engaged producers to implement technologies to manage primarily methane emissions from their operations. Another was regulatory requirements to report emissions to the EPA Green House Gas Inventory (GHGI). This rulemaking (Subpart W for oil and natural gas systems) demonstrated EPA's limited understanding of the nature of oil and natural gas production operations and the limited analysis that had been applied to identify air emissions associated with the industry.

EPA finalized its oil and natural gas production facilities NSPS in 2012. They addressed oil and natural gas production, natural gas processing, production gathering and boosting stations, and natural gas compressor station. The oil and natural gas production regulations target the reduction of VOC from fractured natural gas wells, from oil wells, and from storage vessels. They specifically included reduced emissions completion (REC or Green Completion) limitations for fractured natural gas wells, pneumatic controllers from oil and natural gas wells, and oil and natural gas liquids storage vessels. In general, for the oil and natural gas production NSPS regulation – Subpart OOOO – EPA utilized the technologies that had been a part of the Gas STAR program to fulfill the Best System of Emissions Reduction (BSER) requirements of NSPS. However, the ever-present challenge of developing accurate definitions for the purposes of regulation led to conflicts related to the appropriateness of the BSER requirements to the full scope of facilities captured by the regulations. For example, the REC technology is utilized by hydraulically fractured wells where water can be separated from gas but the definitions captured nitrogen fractured wells that cannot use that technology. Not surprisingly, the regulations were challenged.

Subpart OOOO and Subpart W demonstrated EPA's limited understanding of the nature of oil and natural gas production facility emissions patterns. For NSPS development, failure to have a sound scope of knowledge on emissions and technologies creates a significant regulatory challenge. NSPS requires EPA to use "the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated". It creates four components that must be assessed and balanced – cost, nonair quality health and environmental impact, energy requirements and adequate demonstration. However, EPA never developed robust information on the emissions from oil and natural gas production facilities, never developed robust information on technologies to manage emissions, and never developed robust information on the four factors needed to determine BSER. Instead, EPA relied on is Gas STAR experience and whatever literature was available to it.

In 2013, an analysis developed by the University of Texas generated a new understanding of the emissions dynamics of oil and natural gas production facilities. Most methane emissions studies involve acquiring data from methane plumes using offsite monitoring. Inherently, this approach cannot distinguish between fugitive emissions and permitted emissions from vents and other operations. The University of Texas study included onsite emissions monitoring. One of its most significant findings was that the emissions profile from production operations included a substantial "fat tail" component. That is, while most of the equipment was characterized by low emissions, a small segment would have higher releases due to some type of failure. It raised the challenge of developing fugitive emissions management programs that target correcting this small segment cost effectively. Several state regulatory programs began to develop fugitive emissions programs.

By the beginning of 2014, the political, technical, regulatory framework was characterized by the following components. The Obama Administration was pursuing a more limited regulatory agenda in the context of managing emissions from the expanding development of natural gas. Technically, the emerging understanding of oil and natural gas production emissions was identifying that completion emissions were well managed by REC technology for hydraulically fractured wells, that operating emissions were generally low but with some "fat tails" that needed to be managed, and that the extent of this understanding was based on a limited amount of

information and more was needed. Regulatorily, the primary federal regulations were embodied in the Subpart OOOO NSPS. And, states were beginning to assess methods to address operating emissions.

All of this was about to change.

The Obama Administration Prioritizes Climate Action

In June 2013, the Obama Administration announced its intent to develop a Climate Action Plan to address greenhouse gas (GHG) emissions. Among the target emissions was methane. Methane emissions account for roughly 9 percent of America's GHG emissions. Roughly, one-third of methane emissions come from oil and natural gas systems with roughly one-third of those from oil and natural gas production operations. Consequently, the share of America's GHG emissions from methane releases from oil and natural gas production is between one and two percent. Technically, methane and VOC are emitted simultaneously from oil and natural gas production operations and, therefore, controlling VOC – as Subpart OOOO had done – also controls methane. Significantly, oil and natural gas production emissions were declining.

The issue of managing methane emissions from oil and natural gas production facilities would become a pivotal one for the remainder of the Obama Administration. It was primarily a political issue played out in the regulatory arena. Methane has a higher GHG potential than carbon dioxide although it has a shorter lifetime. Environmentalists began a strategy to attack methane emissions using the climate agenda to address their renewable energy agenda that had been undermined by the shale gas revolution. Part of this agenda was challenging emissions estimates of methane; part of it was pressing the Obama Administration for regulation.

Taking the regulatory agenda first, as the Obama Administration began its second term, its interest in the economic benefits of American natural gas production diminished as the economy strengthened and natural gas supply was strong thereby assuring lower energy prices. As early as 2012, environmentalists had begun petitioning EPA for direct regulation of methane from oil and natural gas production. As the Obama Administration swung from building a strong American energy base to a new international climate role, its interest in aggressively federalizing oil and natural gas production regulation returned. Throughout 2014, environmentalists and industry were actively advocating regarding the need for additional regulation and its pathway.

At the heart of these deliberations was the argument over VOC versus methane regulation under the CAA. VOC is a criteria pollutant under the CAA. This means that the Act sets the regulatory options for both new and existing facilities. New and modified sources are regulated through NSPS, like Subpart OOOO. Existing VOC sources are regulated under the programs related to attainment of National Ambient Air Quality Standards (NAAQS) – in the case of VOC, the NAAQS for ozone. The CAA requires states with areas failing to attain a NAAQS to develop State Implementation Plans (SIPs) to reduce emissions. Ozone is particularly complex and Part D of the CAA sets out detailed requirements for areas to meet or to attempt to meet the ozone NAAQS.

Concurrent with the deliberations regarding its Climate Action Plan, the Obama Administration was considering revision of the ozone NAAQS. At issue was whether to lower the NAAQS and, if so, to what level. Lower levels of the ozone NAAQS would make more of the country nonattainment thereby requiring revised SIPs and bringing areas with existing oil and natural gas production under new regulation.

Methane is not a CAA criteria pollutant. However, EPA can develop NSPS for non-criteria pollutants – as it was doing for carbon dioxide. Environmentalists aggressively insisted on the Obama Administration regulating methane because of its desire to shut down existing oil and natural gas production operations. If EPA promulgates a NSPS for a non-criteria pollutant, the CAA creates a pathway to nationwide existing source regulations for those facilities (Section 111(d)). Consequently, if EPA regulated methane rather than VOC, existing sources could be subject to regulation on a national basis rather than an ozone nonattainment area basis.

Existing source oil and natural gas production regulation is particularly threatened because of the large number of low production oil and natural gas wells – marginal wells. Approximately 80 percent of American oil wells and two-thirds of American natural gas wells are marginal wells. The average marginal oil well produces about 2.2 barrels per day and the average marginal natural gas well produces about 22 mcf per day. Yet, collectively, these wells produce 10 to 20 percent of U.S. oil and 12 to 13 percent of U.S. natural gas. These wells are overwhelming small business operations and are the most economically vulnerable in the current price environment. Consequently, imposing costly regulations on these small sources will result in their shut down.

In January 2015, the Obama Administration announced the scope of its Climate Action Plan for methane emissions. At its heart was a new goal to cut methane emissions from the oil and gas sector by 40 – 45 percent from 2012 levels by 2025. For the oil and natural gas production industry, the announcement identified several key initiatives. First, EPA indicated that it would "…issue a proposed rule in the summer of 2015 and a final rule will follow in 2016." It would "…consider a range of common-sense approaches that can reduce emissions from the sources discussed in the agency's Oil and Gas White Papers, including oil well completions, pneumatic pumps, and leaks from well sites, gathering and boosting stations, and compressor stations." Second, EPA would "…develop new guidelines to assist states in reducing ozone-forming pollutants from existing oil and gas systems in areas that do not meet the ozone health standard and in states in the Ozone Transport Region." Third, EPA would "… explore potential regulatory opportunities for applying remote sensing technologies and other innovations in measurement and monitoring technology to further improve the identification and quantification of emissions and improve the overall accuracy and transparency of reported data cost-effectively." Fourth, BLM would "…update decades-old standards to reduce wasteful venting, flaring, and leaks of natural gas, which is primarily methane, from oil and gas wells."

These initiatives theoretically hinged on the need to meet a specific 40-45 percent reduction target. For the oil and natural gas production segment of the industry, the Gas STAR program and the 2012 Subpart OOOO regulations were producing the targeted reduction without additional regulation. Data showed that – throughout the extensive expansion of American natural gas production resulting from shale gas development – emissions were falling. Ignoring the clear history of falling emissions with increased production, the Obama Administration concluded that expanded production would increase future emissions. While such an argument might have bearing in other industry segments, for oil and natural gas production the inherent decline that occurs in all wells means that maintaining and growing production requires new wells to replace old ones. Therefore, in the time window of 2012 to 2025, the pool of American production wells would be dominated by wells drilled with the new technologies. Consequently, justifying the expanded regulatory agenda required the Obama Administration to change emissions projections.

EPA Proposes Methane Regulations

In late 2015, EPA proposed its package of regulations. For oil and natural gas production facilities it included an expansion of NSPS – Subpart OOOOa, a new Control Techniques Guidelines (CTG) for existing sources in ozone nonattainment areas, and a revised voluntary reduction program replacing Gas STAR. Importantly, the NSPS targeted methane reductions and included a REC program for associated gas from fractured crude oil wells, mandates for pneumatic pumps, and an extensive fugitive emissions program.

The proposal created several contentious issues. First, as noted above, was whether the additional regulations were justified. Second was the selection of methane as the targeted emission because of the potential for the creation of nationwide existing source regulations. Third was the specific requirements of the fugitive emissions program. The fourth related to the CTG proposal. And, fifth was the nature of the voluntary program named The Methane Challenge by EPA.

EPA's decision to choose methane regulation was a linchpin to obtain support from the Keep It in the Ground environmentalists. They primarily focused on developing regulations on existing sources and the methane choice opened that pathway through Section 111(d) of the CAA.

The fugitive emissions issue largely revolved around three factors. First, several states had implemented or were developing fugitive programs, but none of them paralleled the EPA proposal. Since BSER should be based on adequately demonstrated technologies, this inconsistency raised a fundamental question of whether the EPA proposal was BSER. Second, a key component of the EPA proposal was its Leak Detection and Repair (LDAR) requirements. EPA's LDAR program relied on highly costly optical gas imaging (OGI) that raised significant cost effectiveness issues depending on the size of the operation. Third, the proposed rule exempted low producing wells from these requirements, but the process was uncertain. And, its inclusion was strongly opposed by the environmental lobby.

The CTG proposal raised two significant questions. First, if EPA was regulating methane in the NSPS and thereby opening the path to nationwide existing source regulation, a VOC CTG created a second existing source federally generated requirement. EPA suggested that the CTG would be the existing source program, but this view was not endorsed elsewhere in the Obama Administration. And, environmentalists were insisting that once EPA acted on a methane NSPS, it must then regulate existing sources under Section 111(d) – a position that EPA disputed. Second, the CTG essentially based its regulations on the NSPS Subpart OOOO and proposed Subpart OOOOa technology. But, even if the NSPS regulations could be viewed as BSER, CTG are based on Reasonably Available Control Technology (RACT). BSER is not RACT and the technology test is particularly different in assessing its impact on old and small facilities.

While EPA was touting its Methane Challenge as comparable to Gas STAR, industry viewed it as very different, particularly in the context of a massive regulatory initiative. While industry sought to develop a voluntary program that it could embrace as it had Gas STAR, the Methane Challenge did not offer incentives encouraging participation. For example, participation in the Methane Challenge did not prevent EPA from imposing additional regulation that would overlay the voluntary technology placing industry in a position of essentially being regulated twice. Without such incentives, industry had little interest in embracing the Methane Challenge.

Responding to the proposed requirements, industry challenged the Obama Administration justification that these additional regulations were needed to counter increasing methane emissions. Part of the challenge related to the turnover in wells to those with the Subpart OOOO technology during the 2012 to 2025 period. Part of the challenge focused on the small contribution of oil and natural gas production to total GHG emissions. In late 2015-early 2016, EPA countered by changing its calculation of oil and natural gas production emissions estimates in the GHGI. To put this revision in context, a brief discussion of the GHGI is necessary. Not all oil and natural gas production facilities report under Subpart W. EPA set a threshold to limit the burden on small producers and to reflect that smaller wells emit less. Consequently, when it added oil and natural gas production to the GHGI, EPA announced that by obtaining data from about 30 percent of producers, it would capture 85 percent of the GHG emissions. This was logical because the 70 percent of producers not reporting would be the small production wells. Suddenly, in 2015, EPA announced its intent to change the estimating process because of information it had on pneumatic controllers showing higher than previously estimated emissions. However, rather than follow its prior approach, EPA announced that it would revise emissions estimates based on scaling up the reported emissions based on producers. It thereby attributed 70 percent of the emissions to the small wells. This outrageous redistribution of emissions clearly created a basis to imply that there was a need to impose greater regulations. Additionally, EPA gratuitously added emissions from gathering and boosting operations to the production sector.

EPA Regulations Finalized – Litigation Follows

In March 2016, EPA announced its NSPC regulatory package which became effective in June 2016. The package was largely unchanged from the proposal with one significant exception. EPA had deleted the exclusion for low production wells. Environmentalists characterized this deletion as the single, most important provision in the package. They then demanded that EPA act under Section 111(d) on existing sources. EPA declined to act immediately but announced that it would be initiating an Information Collection Request (ICR) to gather information on existing oil and natural gas production.

EPA's action to remove the low production well exclusion is instructive in understanding the issues associated with EPA's technical support for its actions. As described above, EPA has a responsibility under the CAA to determine BSER for NSPS regulations. From the time EPA entered into the consent decree that led to Subpart OOOO, EPA's technical information development consisted largely of the creation of five white papers – papers that were an amalgamation of studies undertaken by others. EPA sought comments and created some working groups. But, EPA did not develop its own data. This is a fundamental and unsettled issue regarding what responsibility EPA bears to assure that its regulatory judgments are sound.

Regarding the decision to eliminate its proposed NSPS low production well exclusion, EPA relied on a study developed by the Environmental Defense Fund (EDF) that was submitted to the record. Although EPA had proposed the exclusion and industry had supported it, EPA then removed the exclusion arguing that counter information had been submitted – the EDF study – and it had not been refuted. Yet, EPA did nothing to assess the validity of the EDF study.

The purpose of the EDF study was to contort available methane sampling data to create the illusion that low producing wells were "super-emitters". All of the underlying studies generated their data by driving vehicles with samplers downwind of production sites, hunting for methane plumes. None of them used samples taken on the production site. This creates two issues. First,

it measures everything emitted at the site – fugitive emissions and permitted vents. Second, the data are collected over minutes – maybe over an hour – but not over a day. The data in the study are presented as if they were daily emissions but the studies merely scale up hourly estimates. Consequently, an emission that might occur for several hours, but not the full day, would be overstated. The study shows emissions as a percentage of production rather than actual emissions. Thus, one mcf emitted out of ten mcf produced is 10 percent, but 50 mcf emitted out of 1000 mcf produced is 5 percent. As a result, it skews the perception of the data to imply that low producing wells are large emitters when they are not. The study's production volumes are really sales volumes, not the amount extracted from the wellhead. Consequently, a "proportional loss rate" of 50 percent would be the calculated loss divided by the volume sold. If the percentage of loss were calculated based on extracted volumes, the 50 percent "proportional loss rate" would drop to 33 percent because the loss would be added to the sales volume to obtain the extracted volume. It only shows data from the 70th percentile of information. This excludes all of the virtually zero emissions that dominate the data. It uses a logarithmic scale to present the data. One of the reasons to use logarithmic scales is to flatten curves to make them look more like straight lines.

These observations can be made without conducting an intense investigation of the study. The study is obviously intended to contort data to create a specific result. Yet, with all the investigative power at EPA, with all of the research work EPA has conducted, EPA took this contrived study at face value to make its determination to remove the low producing well exclusion in the Subpart OOOOa regulations.

In October 2016, EPA finalized the CTG for existing sources which also included a fugitive emissions program but EPA deferred action on how to treat low production wells. This deferral has less meaning than NSPS action because CTG are a framework for states to develop their own regulations and are not specific mandates. However, if a state fails to adopt a CTG based regulation, it must adopt other regulations to achieve the calculated reductions in emissions that the CTG would have provided.

In November 2016, EPA finalized its ICR and began transmitting them to oil and natural gas producers. The ICR required substantial information that would take months to complete. However, the Obama Administration wanted to complete the ICR prior to its end and thereby required completion of the ICR prior to January 20, 2017. EPA was unable to distribute the ICR consistent with this schedule and the ICR remained active when the Trump Administration began.

Multiple parties responded to the Subpart OOOOa regulations seeking judicial repeal and administrative reconsideration in July-August 2016. The Independent Petroleum Association of America (IPAA) and 18 other trade associations, the American Petroleum Institute, the Western Energy Alliance, the Texas Oil and Gas Association, the Interstate Natural Gas Association of America, North Dakota, Texas, West Virginia and 13 other states filed to challenge the Subpart OOOOa regulations in the D.C. Circuit Court; the litigation was consolidated as *North Dakota v. EPA*. Additionally, the IPAA group and others filed petitions for reconsideration on several issues with EPA.

The Trump Administration Acts to Revisit the Regulations – Litigation Follows

With the advent of the Trump Administration, the dynamics of these regulations have changed, but the future is by no means certain.

In March 2017, EPA terminated the ICR following a request by eleven states.

In April 2017, EPA acted to put the *North Dakota v EPA* case in abeyance until it could reconsider the Subpart OOOOa regulations. In May 2017, the D.C. Circuit Court agreed.

In late May 2017, EPA announced a 90-day stay of several components of the Subpart OOOOa regulations including the fugitive emissions program that was scheduled to begin in June. A coalition of environmental groups filed action to block the stay. In mid-June, EPA proposed a two-year suspension of these components of Subpart OOOOa. On July 3, 2017, the DC Circuit Court agreed with the environmental groups and vacated the 90-day stay while mandating immediate application of the regulations. On July 7, 2017, EPA appealed the mandate and sought additional time. The Court sought responses to the EPA appeal during the week of July 11 and delayed the mandate for an additional 14 days to allow EPA to decide its next course of action. Meanwhile, the two-year suspension is undergoing its comment period under the Administrative Procedure Act. This issue of reconsideration will continue to be a ripe forum for litigation for the foreseeable future whether it is related to initiating reconsideration or the regulations that might ultimately be proposed.

Meanwhile, a number of governors have notified EPA that they intend to sue EPA for failing to initiate existing source methane regulations under Section 111(d).

Separately, the CTG for existing sources is becoming an issue in state planning. Although EPA promulgated a revision to the ozone NAAQS in 2015, the revision is being litigated. The Trump Administration has indicated that it may reconsider the revised NAAQS. As a predicate to that action, EPA announced that it will delay requirements for states to submit SIPs; litigation has been initiated to challenge this delay. However, due to its action to revise the ozone NAAQS in 2015, EPA failed to have states submit SIPs to address the 2008 revisions to the ozone NAAQS. Subsequent litigation resulted in EPA being ordered to pursue those SIPs. States are now considering regulations and, since the existing source CTG was finalized in October 2016, it is now a CTG that must be included in state planning. Consequently, this CTG – based on NSPS regulations that are being reconsidered – is now in play for small business wells.

Additionally, in January 2016, BLM proposed its methane regulations that include specific requirements for existing sources on BLM managed resources. These regulations largely track the CTG requirements. The regulations were finalized in November 2015 and were challenged in the Wyoming District Court. Congress attempted to rescind the regulations using the Congressional Review Act (CRA) but it failed. BLM moved to pause the regulations while it reconsiders them. New Mexico and California are acting to challenge the BLM action.

A Future of Regulatory Litigation and Chaos

Clearly, the confrontations over federal methane regulation of oil and natural gas production will continue and escalate. These regulations were driven to final action during the waning days of the Obama Administration. They are built on a characterization of emissions that is false. They fly in the face of a history of methane reductions in the oil and natural gas production segment of the industry and continued expectations of declining emissions in future years. They have become the hyperbolic political fodder for the Keep It in the Ground environmental movement that twists information to pursue its specific agenda.

However, they will also be a part of a larger fabric of litigation that is going to test the nature of America's federal environmental laws and its administrative procedural process. Substantive

issues will be subordinated to procedural ones. The challenges of unwinding the current regulations from the judicial process, developing revisions and moving those proposals to completion will test the remaining years of the Trump Administration. EPA's last Obama Administrator once said about regulation of oil and natural gas production:

> EPA's learning this industry right now because it is not an industry we regulate. We've just gotten into regulation of this so there's a lot of hundreds of thousands of small sources and EPA does not generally have a relationship with this industry as we do other sectors that we've regulated for frankly decades. But we are learning.

Unfortunately, EPA began regulating before it learned. Unlike most industries, oil and natural gas production begins to decline soon after it starts. The industry is comprised of large and small businesses with most low producing wells operated by small businesses. Regulations that might be cost effective when a well is new will not be after it declines and certainly when it is a low producing well. Many of the technologies that these regulations require and use are cost effective for new, large, hydraulically fractured oil and natural gas wells, but others need to revisited. Then, at issue will be whether regulations are needed for America's marginal wells and, if so, whether regulations can be created to manage marginal well emissions rather than force them to be shutdown.

While the federal framework on methane regulations – and other Obama Administration initiated regulations and policies – is wrapped up in aggressive changes by the Trump Administration, Keep It in the Ground environmentalists are not only reacting in the federal court and regulatory agency arena but turning to other venues as well. State regulations will be one target. Using the same arguments – and same specious data – the environmental lobby will be pursuing its agenda by trying to get state legislators and regulators to adopt regulations comparable or more excessive than those promulgated by the Obama Administration. It will continue to litigate and petition for action on the federal level to try to drive or, at least, constrain the federal agenda. And, it will likely seek venues for citizen suits against individual companies.

On balance, the next several years will be challenging for all parties as the nature of the regulatory process – federal and state – and the dynamics of litigation will be tested – more on procedure than substance.

From: ECOS
To: Schwab, Justin
Sent: 12/22/2017 4:34:41 PM
Subject: ECOS Leaders Meet in Washington to Advance Cooperative Federalism, Congress Funds Government thru Mid-January, & More

ECOSWIRE

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ECOS will not be published on December 29 and will resume publication January 5. From all the ECOS staff, best wishes for the holidays and New Year!

ECOS Leaders Advance Discussions with U.S. EPA on Cooperative Federalism and More

This week ECOS President Todd Parfitt of Wyoming, Vice President Becky Keogh of Arkansas, Secretary-Treasurer Jim Macy of Nebraska, and ERIS President David Paylor of Virginia conducted visits with U.S. EPA officials in Washington, DC, to continue conversations around oversight of delegated programs and advancing Cooperative Federalism 2.0. The ECOS leaders met with Henry Darwin, Deputy Assistant Administrator and Chief of Operations, and officials in the U.S. EPA Offices of Air and Radiation and Enforcement and Compliance Assurance.

The leadership also spent time on the search process for a new ECOS/ERIS Executive Director. The members' commitment to the organizations agendas at this busy time of year is sincerely appreciated. [Dunn]

From left to right: Todd Parfitt (WY), Becky Keogh (AR), Susan Bodine (U.S. EPA OECA), David Paylor (VA), and Jim Macy (NE).

Congress Funds Government through Mid-January

On December 20, Congress passed a Continuing Resolution (CR) to fund the federal government through January 19, 2018. The third CR in the FY 2018 budget cycle, this bill maintains FY17 spending levels, albeit with some budget anomalies associated with various policy riders. The bill is expected to be signed by President Trump before the current CR expires at midnight Friday.

With lawmakers imminently heading home for the holiday recess, negotiations will resume in January on overall spending caps as well as several unrelated issues expected to be rolled into the budget debate. [McAleer]

U.S. EPA Announces Next Steps Following Proposed CPP Repeal

U.S. EPA on December 18 issued an Advance Notice of Proposed Rulemaking (ANPRM) indicating that the agency will solicit public input as it considers the next regulatory steps to limit greenhouse gas emissions from existing electric utility generating units (EGUs), also known as power plants.

The ANPRM is a separate, but related, action to the October 16 proposal to repeal the Clean Power Plan. It offers the public the opportunity to comment on specific topics for the agency to consider in developing any subsequent proposed rule. EPA is specifically soliciting information on systems of emission reduction for EGU facilities, compliance measures, and state planning requirements under Clean Air Act section 111(d).

EPA will take comment on the ANPRM for 60 days following publication in the *Federal Register*. More information, including the ANPRM and fact sheet, are available here. [Poole]

ECOS and Other State Media Associations Co-Sign Letter on VIDA

ECOS and three other nonprofit associations representing state environmental regulatory agencies (the Association of Clean Water Administrators [ACWA], the Association of State Wetland Managers [ASWM], and and the Association of Fish and Wildlife Agencies [AFWA]) co-signed a letter to members of Congress this week detailing the potential consequences for environmental quality if the Vessel Incidental Discharge Act (S. 1129) were enacted. The associations previously wrote a letter of concern on VIDA in June 2016.

Read this week's letter here. [Longsworth]

U.S. EPA Finalizes e-Manifest User Fee Rule

U.S. EPA on December 20 finalized its rule for setting and revising fees for users of the e-Manifest system. This final e-Manifest User Fee Rule completes the regulatory framework for implementing Congress' *Hazardous Waste Electronic Manifest Establishment Act of 2012*, which authorizes EPA to implement a national system and collect user fees to recover the costs of developing and operating the system.

Click here for more information about the final e-Manifest User Fee Rule, including the pre-publication version.

For additional information, join EPA for the next e-Manifest webinar on **January 3 at 2-3:30 p.m. Eastern** by accessing the live webinar here. [Parisien]

Former U.S. EPA Acting Administrator McCabe Tapped to Head New Jersey DEP

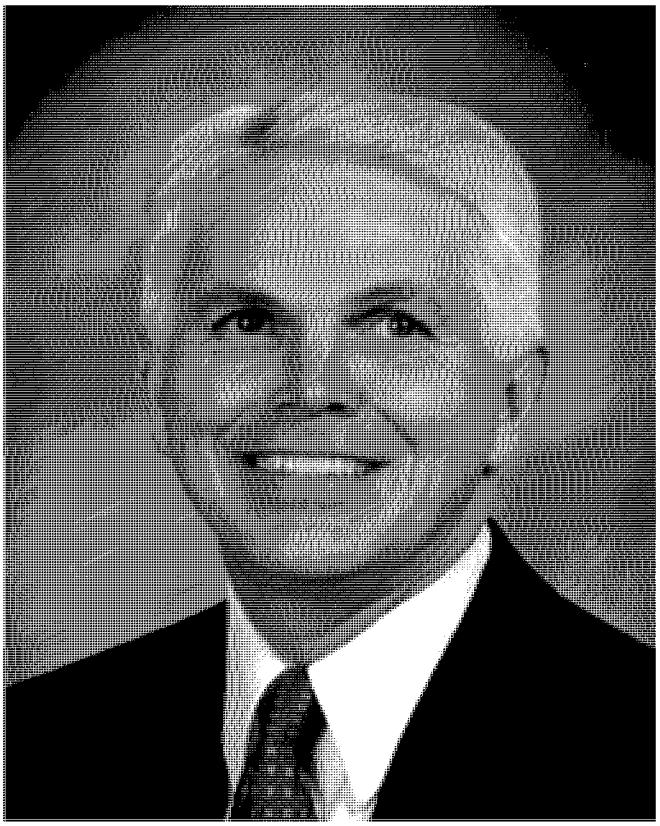
New Jersey Governor-Elect Phil Murphy on December 20 announced his selection of former U.S. EPA Acting Administrator Catherine McCabe to serve as Commissioner of the state Department of Environmental Protection. She will succeed Bob Martin in the post.

Among McCabe's previous positions are Deputy Regional Administrator of EPA's Region 2 and Deputy Chief of the U.S. Department of Justice Environmental Enforcement Section. ECOS looks forward to welcoming her as a member! [Parisien]

Ehm Selected as Executive Committee Region 7 Representative

ECOS is pleased to announce that Bill Ehm of Iowa has been selected by his regional colleagues to serve as Region 7 Representative to the Executive Committee. Ehm fills the unexpired term of Jim Macy, who was elected Secretary-Treasurer earlier this year.

Ehm's term is effective through the 2018 Fall Meeting, with the option for renewal for a full two-year term. [Swanson]



Bill Ehm of Iowa

Cross Off Spring Meeting Registration and Reservations from Your Holiday To Do List

ECOS' elves are already hard at work planning a timely and wide-ranging Spring Meeting on *Getting to Results*. The gathering, to be held March 20-22 ECOS Spring Meeting in St. Paul, Minnesota, will spotlight ECOS' expanding Results.org effort, as well as state initiatives to accelerate and enhance land cleanups, promote cross-agency partnerships, ensure a secure and sustainable energy future, encourage Sustainable Materials Management, achieve tangible results through Cooperative Federalism 2.0 and E-Enterprise, tackle PFAS, and effectively communicate progress to the public.

Also planned are keynotes by Governor Mark Dayton of Minnesota (invited) and a generational expert on building for future agency success, a point-counterpoint session on Clean Water Action 404 assumption, and two offsite evening events including an excursion to the Science Museum of Minnesota.

Register by **February 16** to receive the reduced early bird rate. Also, act now to reserve a room at the hotel by calling The Saint Paul Hotel at (800) 292-9292, and mention the ECOS Spring Meeting to receive the group rate. The special ECOS group rates of $149 (government and staff room) and $169 (deluxe room) plus tax are available until February 19 or sellout of the room block, whichever is sooner. ECOS room nights include March 19, 20, and 21, with limited availability March 22. Visit the Spring Meeting page for additional

details.

For agenda or sponsorship information, please contact Lia Parisien of ECOS. Contact Sarah Grace Longsworth for registration information and Megan Swanson for hotel information. [Parisien]

State News You Can Use

New Mexico Develops Streamlined Oil and Gas Air Emissions Application

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Ohio EPA Announces 2018 Water Pollution Control Loan Fund Program Management Plan

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Mississippi Offers Tips to Promote a Green Holiday Season

Need-to-Know News in Compliance and Enforcement, Air, & Water

U.S. EPA Delays FY17 Data Verification, Plans Webinar on Verification Tool and Improvements

Area of Focus: *Compliance and Enforcement*

This week, ECOS shared with members a letter from U.S. EPA's Office of Enforcement and Compliance Assurance (OECA) announcing a delay in the timing of the FY2017 data verification period to allow states time to review changes to the metrics and measures for the State Review Framework Round 4.

The letter also announces a national webinar on **January 16, 2018 at 3-4:15 p.m. Eastern** regarding data verification and improvements EPA has made to its tool that states use to complete their verification process. States may register here.

For more information, contact Rebecca Kane of OECA. [Graves]

Court Orders U.S. EPA to Set Timetable for Ozone

Designations

Area of Focus: *Air*

On December 20, the U.S. Court of Appeals for the DC Circuit ordered U.S. EPA to act by **January 12** to set a firm date and outline a compliance timetable for remaining attainment designations for the 2015 ground-level ozone standard.

All designations were due October 1. U.S. EPA formally published designations for areas of the country in attainment on November 16. The final decisions for areas likely out of compliance have not been released.

In June 2017, EPA Administrator Scott Pruitt announced a one-year extension that would have pushed back the deadline for all attainment designations until October 2018. This extension was withdrawn in August 2017. For enforcement purposes, the attainment designations start the clock for states that must draft cleanup plans for areas that are out of compliance. [Poole]

U.S. EPA Launches Water System Partnerships Website

Area of Focus: *Water*

U.S. EPA has launched a new interactive website to promote awareness of the benefits of drinking water partnerships. For communities and utilities facing growing costs and challenges for treating drinking water, drinking water system partnerships provide opportunities to increase capacity, share costs, and leverage other resources.

The new website highlights ways partnerships can address these challenges, enhancing public health by working together and sharing information through a user-friendly interface accessible to states, communities, utilities, and others. [Piper]

U.S. EPA Appointments

Stepp Moving From Region 5 to Helm of Region 7

U.S. EPA Administrator Scott Pruitt on December 19 announced the appointment of former ECOS member Cathy Stepp to become Regional Administrator for Region 5.

Stepp currently serves as Principal Deputy Regional Administrator for Region 7 and will return to the Midwest region, where was Secretary of the Wisconsin Department of Natural Resources from 2011 to 2017. Stepp also previously served as a Wisconsin State Senator. [Parisien]

ECOS Staff News

Graves Promoted to Executive Project Manager

ECOS congratulates Beth Graves on her recent promotion to the position of Executive Project Manager!

Graves, who has worked for the association for a decade, spearheads work conducted under the E-Enterprise for the Environment initiative and the ECOS Planning Committee. [Parisien]

Opportunities

Reminder: State Communications Leads Sought for New ECOS Community of Practice

ECOS invites all members to provide the contact information for their agency's lead communications expert to become part of our new Communications Community of Practice. In accordance with ECOS President Todd Parfitt's 2017-2018 priorities, ECOS is launching this virtual learning community for state communications professionals to share best practices, success stories, challenges, and transferable lessons.

It is anticipated that once all contacts are identified, the group may hold three calls per year and also use one another as resources to share questions and information. The group also will periodically interface with U.S. EPA communications leads from Headquarters and the Regions.

Contact information for your state expert may be sent to Nia Duke of ECOS. [Duke]

U.S. EPA Invites Nominations to National Advisory Council for Environmental Policy and Technology

U.S. EPA is seeking nominees to fill several potential vacancies on the National Advisory Council for Environmental Policy and Technology (NACEPT). Representatives of state, local, and tribal governments, academia, industry, and nongovernmental organizations serve on this federal advisory committee.

NACEPT provides advice to the EPA Administrator on a range of policy, management, and technology issues.

For more information, including how to apply, refer to the *Federal Register* notice. The

deadline for applications is **January 3, 2018**. [Hanson]

U.S. EPA Seeks Nominations to Commission for Environmental Cooperation Committee

U.S. EPA invites nominations for appointment to the Governmental Advisory Committee to advise the U.S. Representative to the Commission for Environmental Cooperation.

Nominees are sought by **February 16, 2018** from the state, local, and tribal government sectors. For more information, click here. [Parisien]

Upcoming Events

Webinars

ITRC on Remedy Selection for Contaminated Sediments

The Interstate Technology & Regulatory Council (ITRC) will hold its first online training of 2018 on *Remedy Selection for Contaminated Sediments* on **January 9, 2018 at 1-3:15 p.m. Eastern.**

The sediments underlying many of our nation's major waterways are contaminated with toxic pollutants from past industrial activities. Cleaning up contaminated sediments is expensive and technically challenging. Sediment sites are unique and complex, and require a multidisciplinary approach and often project managers lack sediments experience. This training course will teach participants to apply the associated ITRC technical and regulatory guidance as a tool to overcome the remedial challenges posed by contaminated sediment sites.

Learn more and register here. [Bodi]

Exchange Network on Grant Applications

In support of the FY 2018 Exchange Network (EN) Grant cycle, U.S. EPA is hosting webinars to assist interested applicants. The final webinar will be held **January 10, 2018 at 1-2 p.m. Eastern**. Topics will include a summary of the FY 2018 EN Grant program, new and modified solicitation notice content, administrative procedures for submitting applications, tips on writing a high-quality application, and a question-and-answer session for potential applicants.

To participate, call (866) 299-3188 and use conference code 2025660466#, and access this webinar link. An Adobe Connect account is not required to enter the webinar, and

participants can simply log in as a guest.

For more information, please contact EPA's Salena Reynolds. [McAleer]

ECOS and U.S. EPA on ECHO

An E-Enterprise ECHO team led by Oklahoma and EPA has identified potential improvements to the display, usability, and accuracy of U.S. EPA's Enforcement and Compliance History Online (ECHO) website. The team has identified a number of possible enhancements to improve the user experience and the display of facility compliance history.

Two identical webinars were planned to share the proposed changes with the co-regulator community and receive feedback. The first was held on December 12, and a second webinar will repeat the same content on **January 11, 2018 at 12-2 p.m. Eastern**. Please register here.

In advance of the webinars, states can learn more about the proposed changes in this summary document. Please note that the changes are proposals only at this point and the team is seeking comments and input to ensure that proposed changes will meet the needs of ECHO stakeholders. You may send general written comments, questions, and markup of the summary document to Layne Piper of ECOS.

Oklahoma, as state team lead, asks states to provide input on a very brief set of questions to help the team better understand the ECHO community's preferences for a specific set of display and labeling options. Please click here by **January 26** to participate. [Piper]

NEWMOA and NERC on C&D Materials Management & Markets in the Northeast

The Northeast Waste Management Officials Association (NEWMOA) and Northeast Recycling Council (NERC) will host a webinar on Construction & Demolition (C&D) Materials Management and Markets in the Northeast on **January 17, 2018 at 2-3:30 p.m. Eastern**.

The discussion will center on two main areas:

- The results of NEWMOA's recently released analysis of data collected by the environmental agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont on architectural C&D materials disposal, processing, and recovery for reuse and recycling.
- The results of a Massachusetts Department of Environmental Protection (MassDEP) funded study that evaluated the current and future status of C&D debris management in Massachusetts, and identified and recommended potential opportunities for the diversion of a greater proportion of recyclable materials to recycling markets. NERC

administered and contracted with DSM Environmental Services to conduct the project. MassDEP has established a goal of diverting 50 percent of C&D materials from disposal, but in recent years the actual diversion rate has plateaued at around 30 percent. The primary objective of the analysis undertaken by DSM was to first assess incoming and outgoing materials at Massachusetts C&D processors and handling facilities, and to determine what the opportunities and constraints are to increase materials diversion beyond 30 percent.

Register for the webinar here. Please reach out to Connor MacCartney with any questions. [MacCartney]

U.S. EPA on Urban Soil Contamination

U.S. EPA will hold its first Tools and Resources webinar of the New Year on **January 17, 2018 at 3-4 p.m. Eastern**. The webinar will focus on identifying sources (site-related or natural, anthropogenic) of soil contamination in urban settings, a process vital to decision-making during environmental cleanups.

Presenters will discuss EPA's methodology for citywide or urban area background data set collection, as well as results of a recent U.S. EPA study on soil contamination in Louisville and Lexington, Kentucky; Memphis and Chattanooga, Tennessee; Raleigh and Winston-Salem, North Carolina; and Gainesville, Florida.

To register, click here. [Longsworth]

ECOS on 2018 Clean Water SRF

On **January 30, 2018 at 2-3:30 p.m. Eastern**, ECOS will host a webinar to highlight three states' innovative uses of Clean Water State Revolving Funds (CWSRF). The three featured projects demonstrate unique uses and dispersion of CWSRF funds, and offer valuable case studies that will build state capacity and knowledge.

See this flyer for more information on the presentations from Idaho, Iowa, and Massachusetts. The webinar is the product of a research project to document the flexibilities of the CWSRF. ECOS is working under a cooperative agreement with U.S. EPA's Office of Water.

Register here for the webinar, or contact Layne Piper for more information. [Piper]

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To: Carfora, Debra (ENRD)[Debra.Carfora@usdoj.gov]
Cc: Smith, Kristi[Smith.Kristi@epa.gov]
From: Robert Ukeiley
Sent: Wed 11/9/2016 9:29:41 PM
Subject: example of notice of stip to extend
stip of ext utah.pdf

Robert Ukeiley

Law Office of Robert Ukeiley

255 Mountain Meadows Road

Boulder, CO 80302

Tel Ex. 6

rukeiley@igc.org

I check email infrequently. If this is urgent, feel free to call.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SIERRA CLUB *et al.*, *Plaintiff,* v. GINA McCARTHY, Administrator, United States Environmental Protection Agency, in her official capacity, *Defendant.*	Case No. 4:14-cv-5091-YGR and Case No. 4:14-cv-3198-YGR (consolidated) **JOINT STIPULATION TO MODIFY ORDER (DKT. NO. 41)**

ED_001650_00102044-00001

Defendant Gina McCarthy, in her capacity as Administrator of the United States Environmental Protection Agency ("EPA"), and Plaintiffs Sierra Club and WildEarth Guardians (collectively, the "Parties") file this stipulation notifying the Court that the parties have agreed to extend the final action deadline for final action on the Utah state implementation plan ("SIP") submission for the Clean Air Act ("CAA") section 110(a)(2)(A)-(C), (D)(i)(II) (prong 3 only)-(H), (J)-(M) elements, 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) (prong 3 only)-(H), (J)-(M), for the 2008 ozone National Ambient Air Quality Standard ("NAAQS"). The aforementioned deadline is set forth in Paragraph "ll" of the Judgment and Order entered by the Court on May 15, 2015 (Dkt. No. 41). The Judgment and Order provides, inter alia, that "the deadlines established by this Judgment and Order may be extended (a) by written stipulation of Plaintiff and EPA with notice to the Court" (Dkt. No. 41 at 5);

WHEREAS, the Judgment and Order provides that the appropriate EPA official shall sign a notice of final rulemaking to approve, disapprove, conditionally approve, or approve in part and conditionally approve or disapprove in part, the Utah state implementation plan submission pursuant to sections 110(k)(2)-(4) of the CAA, 42 U.S.C. §§ 7410(k)(2)-(4), no later than the June 30, 2016 for the section 110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M) (excluding prong 4) elements, 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M) (excluding prong 4) for the 2008 ozone NAAQS (Dkt. No. 41 at 4 ¶ ll);

WHEREAS, on April 13, 2016, EPA proposed to approve Utah's SIP submission addressing the requirements of 42 U.S.C. § 7410(a)(2)(A), (B), (C), (D)(i)(II) (prong 3), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M) for the 2008 ozone NAAQS, *Proposed Rule*, 81 Fed. Reg. 24,525 (Apr. 26, 2016);

WHEREAS, EPA has determined that it needs additional time to finalize the rulemaking to address public comments raising novel issues; and

WHEREAS, the parties have agreed to an extension of the final rule deadline in Paragraph "ll" from June 30, 2016 to July 21, 2016.

NOW THEREFORE, Plaintiffs and EPA hereby stipulate as follows:

ED_001650_00102044-00002

1. EPA's deadline to perform the action described in Paragraph "ll" of the Judgment and Order (Dkt. No. 41, ¶ ll) is extended to July 21, 2016.

Date: June 15, 2016

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division

/s/ *Leslie M. Hill*
LESLIE M. HILL
United States Department of Justice
Environmental Defense Section
601 D Street, NW, Suite 8000
Washington, DC 20004
Tel: (202) 514-0375
Fax: (202) 514-8865
Email: leslie.hill@usdoj.gov

Attorneys for EPA

Date: June 11, 2016

/s/ Robert Ukeiley (email authorization 6/11/16)
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KRISTIN HENRY (Cal. Bar. No. 220908)
Sierra Club
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San Francisco, CA 94105
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kristin.henry@sierraclub.org

Attorneys for Plaintiffs

ED_001650_00102044-00003

To: Smith, Kristi[Smith.Kristi@epa.gov]
Cc: Elena Saxonhouse[elena.saxonhouse@sierraclub.org]; Smith, Suzanne[Smith.Suzanne@epa.gov]
From: Joshua Smith
Sent: Tue 11/8/2016 5:39:56 PM
Subject: Re: Texas Ozone SIP
TX ISIP Petition for Review FINAL.pdf

Kristi and Suzanne,
Thanks for your quick responses, and thank you for taking the time out of your schedule to discuss this petition.

We did file our petition for review in the Fifth Circuit. Although the case has not yet been docketed, I received verbal confirmation from the clerk of the court that it is being processed. I'll update you as soon as the court dockets the case, which may take a day or two; in the meantime, here is a copy of the filing.

Let me know when you're able to get a DOJ attorney assigned the case, so that we can discuss the possibility of holding the litigation in abeyance.

Thank you,

Josh

On Mon, Nov 7, 2016 at 10:10 AM, Smith, Kristi <Smith.Kristi@epa.gov> wrote:

Josh –

Please let me know as soon as your petition is filed, so we can get a DOJ attorney assigned. Then we can bring them up to speed regarding the plan to hold the case in abeyance pending the larger settlement talks going on in TX Regional Haze.

- Kristi

Kristi M. Smith * Assistant General Counsel for the NAAQS Implementation Group * Air & Radiation Law Office * US EPA, Office of General Counsel * smith.kristi@epa.gov * (202) 564-3068 *

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From: Joshua Smith [mailto:joshua.smith@sierraclub.org]
Sent: Monday, November 07, 2016 12:33 PM
To: Smith, Kristi <Smith.Kristi@epa.gov>
Cc: Elena Saxonhouse <elena.saxonhouse@sierraclub.org>; Smith, Suzanne <Smith.Suzanne@epa.gov>
Subject: Re: Texas Ozone SIP

Kristi,

Thank you for taking the time to talk on Friday. I greatly appreciate it.

One follow-up clarification. As I mentioned on Friday, we think it makes sense to file a motion to hold the SIP litigation in abeyance so as to allow a little more time for these settlement discussions play out. And if EPA is amenable, we would prefer to file a *joint* motion.

So, if you have a chance, I think it would be helpful to loop in DOJ in the coming days, so that we can start the process of seeking to hold the case in abeyance.

Thanks,

Josh

On Fri, Nov 4, 2016 at 12:52 PM, Joshua Smith <joshua.smith@sierraclub.org> wrote:

> Thanks for the prompt response, Kristi.
>
> Apologies for not being clearer: yes, we would be challenging only the September 9 action, and in particular whether the Texas ISIP complies with section 110(a)(2)(A). Not the recent direct rule relating to section 110(a)(2)(J).

I think Elena and I are both available this afternoon, as well. Would you be able to hop on a call at 4:30 or 5:00 pm ET? I don't think it would take more than 20-30 minutes to fill you in.

Thanks,

Josh

On Fri, Nov 4, 2016 at 12:47 PM, Smith, Kristi <Smith.Kristi@epa.gov> wrote:

Josh –

Please disregard my message below. I realize that I was looking at the later FRN notice on this same action and not the FR notice you referenced. I'd be happy to talk about the larger final action on this iSIP notice.

I apologize for my confusion and first e-mail response.

- Kristi

Kristi M. Smith * Assistant General Counsel for the NAAQS Implementation Group * Air & Radiation Law Office * US EPA, Office of General Counsel * smith.kristi@epa.gov * (202) 564-3068 *

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From: Smith, Kristi
Sent: Friday, November 04, 2016 3:26 PM
To: 'Joshua Smith' <joshua.smith@sierraclub.org>
Cc: Elena Saxonhouse <elena.saxonhouse@sierraclub.org>; Smith, Suzanne <Smith.Suzanne@epa.gov>
Subject: RE: Texas Ozone SIP

Josh –

I would be open to talking. I'm available until 5:30 today.

However, I note that the time filing a petition for judicial review of this action is not next week. Rather, the rule you reference was a direct final rule with a parallel proposal, and the deadline for filing comments on the proposal is next week. As stated clearly in the rule:

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on December 6, 2016 without further notice unless we receive relevant adverse comment by November 7, 2016. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

So if you have any comments regarding this action, you should file comments and then we will withdraw this rule before its effective date and issue a new final rule that addresses those comments.

- Kristi

Kristi M. Smith * Assistant General Counsel for the NAAQS Implementation Group * Air & Radiation Law Office * US EPA, Office of General Counsel * smith.kristi@epa.gov * (202) 564-3068 *

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From: Joshua Smith [mailto:joshua.smith@sierraclub.org]
Sent: Friday, November 04, 2016 2:17 PM
To: Smith, Kristi <Smith.Kristi@epa.gov>
Cc: Elena Saxonhouse <elena.saxonhouse@sierraclub.org>
Subject: Texas Ozone SIP

CONFIDENTIAL SETTLEMENT COMMUNICATION/JOINT PROSECUTION PRIVILEGED

Good morning Kristi,

I hope all is well. I recently reached out to Suzanne Smith about EPA's final approval of the Texas Infrastructure State Implementation Plan for the 2008 Ozone standard, 81 Fed. Reg. 62375, EPA Docket No. EPA–R06–OAR–2012–0953; FRL–9950–77– Region 6.

Sierra Club will likely file a petition for review of that approval early next week--the deadline is November 8.

I wanted to bring you into the loop because the ozone SIP litigation has potential implications for several of the generators in the regional haze case, and is therefore indirectly related to our settlement talks.

Might you have a few minutes today or Monday to discuss the potential litigation, and how it might affect (or be affected by) our settlement discussions?

Thanks,

Josh

--

Joshua Smith

Staff Attorney

Sierra Club Environmental Law Program

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Oakland, CA 94612

Ex. 6

(415)977-5793 (fax)

Ex. 6 (cell)

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--

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--

Joshua Smith

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

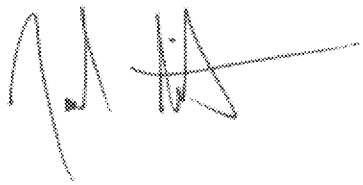
SIERRA CLUB,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No._____
	)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and **GINA MCCARTHY**, in her official capacity as Administrator of the United States Environmental Protection Agency,	)	
	)	
Respondent.	)	

PETITION FOR REVIEW

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and Federal Rule of Appellate Procedure 15(a), Sierra Club petitions the United States Court of Appeals for the Fifth Circuit for review of the final action of Respondents United States Environmental Protection Agency and Gina McCarthy, entitled "*Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure or Requirements for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air Quality Standards; Final Rule*," 81 Fed. Reg. 62,375 (Sept. 9, 2016) (attached as Exhibit A). The agency docket number for the rule is EPA-R06-OAR-2012-0953.

Jurisdiction and venue for this petition are proper in this Court under 42 U.S.C. § 7607(b), and this petition for review is timely filed within sixty days of the date of publication of the final rule in the Federal Register. *See* 81 Fed. Reg. at 62,377 ("Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016.").

Dated: November 7, 2016



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(510) 208-3140 (facsimile)
sanjay.narayan@sierraclub.org

Counsel for Sierra Club

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SIERRA CLUB,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No._____
	)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and **GINA MCCARTHY**, in her official capacity as Administrator of the United States Environmental Protection Agency,	)	
	)	
Respondent.	)	

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Petitioner: Sierra Club. As required by Federal Rule of Appellate Procedure 26.1, the undersigned counsel certifies that Sierra Club has no parent company, and no publicly-held company owns a 10% or greater interest in Sierra Club.

2. Counsel for Sierra Club: Joshua Smith and Sanjay Narayan with Sierra Club.

3. Respondents: United States Environmental Protection Agency; Gina McCarthy, Administrator, U.S. Environmental Protection Agency; Ron Curry, Regional Administrator, U.S. Environmental Protection Agency.

4. Counsel for Respondents United States Environmental Protection Agency and Gina McCarthy: Lorretta E. Lynch, Attorney General of the United States; Avi Garbow, General Counsel, U.S. Environmental Protection Agency; Suzanne Smith, U.S. Environmental Protection Agency; and Kristi Smith, U.S. Environmental Protection Agency.

Respectfully submitted,

/s/ Joshua D. Smith
Joshua D. Smith
Attorney of Record for Sierra Club

CERTIFICATE OF SERVICE

On November 7, 2016, I served the foregoing Petition for Review by certified mail, return receipt requested, on the following parties of interest:

United States Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
(202) 564-4700

The Honorable Gina McCarthy, in her official capacity as
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Office of the Administrator, Mail Code 1101A
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Washington, D.C. 20460
(202) 564-4700

The Honorable Loretta Lynch, Attorney General
Attorney General of the United States
U.S. Department of Justice
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(202) 514-2000

Avi Garbow, General Counsel
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1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-8040

Correspondence Control Unit
Office of General Counsel (2311)
United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

/s/ Joshua D. Smith
Joshua D. Smith
Counsel for Sierra Club

Exhibit A

Dated: August 24, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA is amending 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

■ 2. In § 52.870(e) the table is amended by adding entry (44) in numerical order to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(44) Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	11/16/15	9/9/16, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable. [EPA–R07–OAR–2016–0313; FRL–]

[FR Doc. 2016–21474 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0953; FRL–9950–77–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure or Requirements for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) submissions from the State of Texas for Ozone (O_3) and Nitrogen Dioxide (NO_2) National Ambient Air Quality Standards (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 O_3 and 2010 NO_2 NAAQS (infrastructure SIPs or i-SIPs). These i-SIPs ensure that the State's SIP is adequate to meet the State's responsibilities under the Federal Clean Air Act (CAA).

DATES: This rule is effective on October 11, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2012–0953. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, telephone (214) 665–6454, *fuerst.sherry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means the EPA.

I. Background

The background for this action is discussed in detail in our February 8, 2016, proposal (81 FR 6483). In that document we proposed to approve elements of SIP submittals from the State of Texas for the 2008 O_3 and 2010 NO_2 NAAQS. These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 O_3 and 2010 NO_2 i-SIPs.

We received comments on the proposal submitted jointly from two organizations. Our response to the comments are below.

II. Response to Comments

Comment: We received one set of comments—submitted jointly by the Sierra Club and Downwinders at Risk—on the February 8, 2016 proposal to approve certain elements of Texas's SIP submissions for the 2008 ozone and 2010 NO_2 NAAQS. These comments are provided in the docket for today's rulemaking action. The commenters contend that EPA cannot approve the section 110(a)(2)(A) portion of Texas's 2008 ozone infrastructure SIP submission because of Fifth Circuit "binding precedent" purportedly holding this portion of the submission must "prohibit upwind sources in Texas from significantly contributing to nonattainment in downwind areas" in Texas. Specifically, the commenters contend that there are five coal-fired power plants in East Texas that "significantly contribute" to Dallas-Fort Worth's ozone nonattainment problem and that the Texas i-SIP fails to address those emissions.

Response: We disagree with the commenters that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data and modeling show current and future nonattainment. We believe that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

The commenters suggest that EPA must disapprove the Texas ozone infrastructure SIP because of the fact that areas in Texas have air quality data and modeling projections above or forecasting above the standard, which proves that the infrastructure SIP is

inadequate. We disagree with the commenters because EPA does not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS. Thus, during a significant portion of the period that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state. In light of the structure of the CAA, our long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

Our interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in "air quality control regions" (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas in compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for "attainment" of the NAAQS and section 110(a)(2)(B) specified that the plan must include "emission limitations, schedules, and timetables for compliance with such limitations and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS]." In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (*i.e.,* were nonattainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause "as may be necessary to insure attainment and maintenance [of the NAAQS]" with "as may be necessary or appropriate to meet the applicable requirements of this chapter." Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. More detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

For all of these reasons, EPA disagrees with the commenters that we must disapprove an infrastructure SIP revision if there are monitored or forecasted violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather we believe that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time we are acting upon the submittal.

Further, we disagree with the commenters' suggestion that the Texas SIP does not adequately address the CAA section 110(a)(2)(A) requirement for enforceable emission limits based on *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002). The commenters contend that the Fifth Circuit's opinion in *Sierra Club* mandates disapproval by EPA of this i-SIP because Texas has areas measuring nonattainment of the NAAQS at issue. The Fifth Circuit's opinion is not "binding precedent" on this point, and mandates no such disapproval.

To the extent the Fifth Circuit discussed section 110(a)(2)(A) at all in *Sierra Club,* it was in dicta. The Fifth Circuit's *Sierra Club* opinion primarily concerned the distinct issue of whether EPA's "extension of the statutory date" for Beaumont, Texas to attain the one-hour ozone NAAQS (and approval of Texas's attainment SIP based on that extension) complied with the CAA.[1] The court's lone citation to CAA section 110(a)(2)(A) appears in a portion of the opinion titled, "Factual and Procedural Background," following a brief discussion of CAA section 110(a)(2)(D)(i)(I). Read in full context, it is clear that the court's mention of section 110(a)(2)(A) is merely a recitation of the regulatory background, not a holding:

> Under the CAA, states must adopt SIPs specifying emission limitations applicable to pollution sources in order to maintain and enforce each NAAQS. 42 U.S.C. 7410(a). SIPs are submitted to the EPA, which may approve, conditionally approve, or disapprove the SIPs in full or in part. *Id.* § 7410(k). Significantly, the CAA has a provision that requires SIPs to contain provisions regulating emissions that "contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard." *Id.* § 7410(a)(2)(D)(i)(I). In addition, as noted in the challenged final action, the EPA has interpreted 42 U.S.C. 7410 (a)(2)(A) as incorporating a similar requirement that an upwind area be prohibited from contributing significantly to nonattainment in a downwind area within the same state. *See* 66 FR 26,917.[2]

This lone mention of CAA section 110(a)(2)(A) was likely because EPA had invoked its interpretation of that section as one justification for why it was reasonable to read the Act as permitting the relevant deadline extension. While this passing mention of CAA section 110(a)(2)(A) was dicta, the Fifth Circuit's decision invalidating EPA's extension policy was not: Regardless of the merits of EPA's proffered interpretation of CAA section 110(a)(2)(A), the court held at *Chevron* step one that the CAA did not authorize EPA to grant extensions of the attainment date.[3]

The EPA interpretation mentioned off-hand in the *Sierra Club* opinion—*i.e.,* that section 110(a)(2)(A) incorporates a similar requirement for *intrastate* transport as section 110(a)(2)(D)(i)(I) does for *interstate* transport—is no longer the Agency's interpretation and has not been so for quite some time.[4] EPA's prior

[1] *See Sierra Club* v. *EPA,* 314 F.3d 735, 739–43 (5th Cir. 2002). The case also addressed whether EPA had reasonably concluded that no additional Reasonably Available Control Measures were required for the Beaumont area. *See id.* at 743–45.

[2] *Id.* at 737.

[3] *Id.* at 740–41.

[4] Likewise, the details of the Agency's interpretation of CAA section 110(a)(2)(D)(i)(I) have also changed, in part guided by U.S. Supreme Court and D.C. Circuit case law evaluating EPA's rulemakings under that provision. *See, e.g., North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008)

interpretation is not "carved in stone"; agencies are permitted to change their interpretations.[5] EPA's most recent interpretation of CAA section 110(a)(2)(A) can be found in the 2013 Infrastructure SIP Guidance,[6] as well as relatively recent regulatory actions.[7]

Even if the Fifth Circuit had not reversed the EPA's extension policy at *Chevron* step one (which it did), and even if the EPA had not subsequently changed its interpretation of CAA section 110(a)(2)(A) (which it has), the commenters would still be incorrect in their contention that EPA must use the same "significant contribution" analysis for intrastate emissions that EPA has recently used for interstate emissions under section 110(a)(2)(D)(i)(I). That analysis is based in part on an evaluation of "the total 'collective contribution' " of multiple upwind *interstate* sources that is captured at various significance thresholds;[8] it was never intended to apply in the intrastate context. Nor does the relevant statutory phrase, "significant contribution," appear in CAA section 110(a)(2)(A).

Section 110(a)(2)(A) of the CAA requires enforceable emission limits and control measures. As noted in the 2012 Infrastructure SIP Guidance, a different part of the CAA, part D, outlines the process, timeframe, and substantive requirements for states to bring their nonattainment areas into attainment. The Fifth Circuit's *Sierra Club* opinion says nothing to the contrary. The court in no way ruled that infrastructure SIPs must contain provisions prohibiting upwind intrastate areas from "significantly contributing" to nonattainment in downwind intrastate areas, or that EPA must apply the same technical analysis to intrastate emissions as it does for interstate emissions under a different subsection. Commenters' reliance on the Fifth Circuit's opinion as setting forth that precedent is misplaced. In short, we disagree that the *Sierra Club* opinion constitutes "binding precedent" requiring us to disapprove the infrastructure SIP for CAA section 110(a)(2)(A).

(evaluating EPA's Clean Air Interstate Rule, 70 FR 25,162 (May 12, 2005); *EME Homer City Generation, L.P.* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012), *rev'd* 134 S. Ct. 1584 (2014), *remanded to* 795 F.3d 118 (D.C. Cir. 2015) (evaluating EPA's Cross-State Air Pollution Rule, 76 FR 48208 (Aug. 8 2011)).

[5] *See Nat'l Cable and Telecomms. Ass'n* v. *Brand X Internet Servs.*, 545 U.S. 967, 981–82 (2005) (quoting *Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 863–64 (1984)).

[6] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).

[7] *See, e.g.*, 80 FR 33840.

[8] *See, e.g.*, 76 FR 48208, 48236–37 (Aug. 8, 2011).

III. Final Action

We are approving elements of the (1) December 13, 2012, SIP submittal for the State of Texas pertaining to the implementation, maintenance and enforcement of the 2008 ozone NAAQS, and; (2) December 7, 2012, SIP submittal pertaining to the implementation, maintenance and enforcement of the 2010 nitrogen dioxide NAAQS as outlined in our February 8, 2016, proposal. Specifically, EPA is approving the following infrastructure elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i) (portions pertaining to PSD for 2008 O_3 and 2010 NO_2 and portions pertaining to nonattainment and interference with maintenance for 2010 NO_2), D(ii), (E), (F), (G), (H), (K), (L) and (M).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 31, 2016.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270(e), the table titled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding entries at the end for "Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard" and "Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard" to read as follows.

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard.	Statewide	12/7/2012	9/9/2016, [Insert **Federal Register** citation].	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portions pertaining to nonattainment and interference with maintenance), D(ii), (E), (F), (G), (H), (K), (L) and (M).
Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard.	Statewide	12/13/2012	9/9/2016, [Insert **Federal Register** citation].	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portion pertaining to PSD), D(ii), (E), (F), (G), (H), (K), (L) and (M).

[FR Doc. 2016–21593 Filed 9–8–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0238; FRL–9951–94–Region 1]

Air Plan Approval; Connecticut; NO_X Emission Trading Orders as Single Source SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision continues to allow facilities to create and/or use emission credits using NO_X Emission Trading and Agreement Orders (TAOs) to comply with the NO_X emission limits required by Regulations of Connecticut State Agencies (RCSA) section 22a-174–22 (Control of Nitrogen Oxides). The intended effect of this action is to approve the individual trading orders to allow facilities to determine the most cost-effective way to comply with the state regulation. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on October 11, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R01–OAR–2015–0238. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1657, fax number (617) 918–0657, email *Dahl.Donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Table of Contents

I. Summary of SIP Revision
II. Final Action
III. Statutory and Executive Order Reviews

I. Summary of SIP Revision

On November 15, 2011, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of eighty-nine source-specific Trading Agreement and Orders (TAOs) that allow twenty-four individual stationary sources of nitrogen oxide (NO_X) emissions to create and/or trade NO_X emission credits in order to ensure more effective compliance with EPA SIP-approved state regulations for reducing NO_X emissions. We previously approved source-specific TAOs of the same kind issued by CT DEEP under this program for these same sources on September 28, 1999 (64 FR 52233), March 23, 2001 (66 FR 16135), and September 9, 2013 (78 FR 54962). The November 15, 2011 SIP submittal also includes Consent Order 8029A issued to Hamilton Sundstrand which addresses Volatile Organic Compound (VOC) emissions.

On June 15, 2016 (81 FR 38999) EPA published a notice of proposed rulemaking (NPR) for the State of Connecticut's 2011 SIP revision submittal, proposing approval of the TAOs, except for Consent Order 8029A. The NPR also proposed approval of the revised TAO 8110A issued to Yale University. This TAO was originally submitted as part of a July 1, 2004 SIP revision from Connecticut, and was modified by CT DEEP on May 29, 2015.

The rationale supporting EPA's proposed rulemaking action is explained in the published NPR. The NPR is available in the docket for this

To: Arra, Sarah[Arra.Sarah@epa.gov]
Cc: Smith, Kristi[Smith.Kristi@epa.gov]; kmalawoffice[kmalawoffice@gmail.com]
From: Robert Ukeiley
Sent: Mon 9/25/2017 9:46:25 PM
Subject: Illinois Conflict of Interest provision

Dear Ms. Arra:

On August 26, 2015, EPA disapproved the State Board Infrastructure SIP Requirement for the 2006 PM2.5 and 2008 ozone NAAQS.

Has Illinois since submitted to EPA a SIP Submittal to address these state board requirements?

Thanks

Robert Ukeiley

Senior Attorney

Center for Biological Diversity

Ex. 6

rukeiley@biologicaldiversity.org

To: Smith, Kristi[Smith.Kristi@epa.gov]
Cc: kmalawoffice[kmalawoffice@gmail.com]
From: Robert Ukeiley
Sent: Fri 9/29/2017 3:49:07 PM
Subject: AI and MS conflict of interest case
RU EOA 5237642-0--27539.pdf
corp disclosure.pdf
1-main.pdf

Kristi:

Please see attached. Note we intend to add IL into this case as EPA's FIP obligation became past due no later than September 25, 2017.

Robert Ukeiley

Senior Attorney

Center for Biological Diversity

Ex. 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY 1212 Broadway, Suite 800 Oakland, CA 94612,	)	
CENTER FOR ENVIRONMENTAL HEALTH 2201 Broadway, Suite 302 Oakland, CA 94612	)	
and	)	
SIERRA CLUB 2101 Webster St., Suite 1300 Oakland, CA 94612	)	
Plaintiffs,	)	
	)	Civ. No. _____
v.	)	
SCOTT PRUITT, in his official capacity as Administrator, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W. Washington, DC 20460,	)	
Defendant.	)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY, THE CENTER FOR ENVIRONMENTAL HEALTH, and THE SIERRA CLUB bring this Clean Air Act citizen suit to compel Defendant, SCOTT PRUITT, in his official capacity as Administrator of the United States Environmental Protection Agency, ("EPA"), to undertake overdue Congressionally mandated duties. Specifically, the Administrator has failed to promulgate federal

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implementation plans to ensure that Mississippi and Alabama address conflicts of interest for those who approve air pollution permits or enforce air pollution protective measures. Mississippi and Alabama are almost forty years late in having these conflict of interest avoidance and disclosure requirements in place.

2. Accordingly, Plaintiffs the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club bring this action against Defendant Scott Pruitt, in his official capacity as EPA Administrator, to compel him to perform these mandatory duties.

II. JURISDICTION

3. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

4. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

III. NOTICE

5. On June 21, 2017, Plaintiffs mailed to Defendant by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. More than sixty days have passed since EPA received this "notice of intent to sue" letter. EPA has not remedied the violations alleged in this Complaint. Nor has EPA responded to the Plaintiffs' notice of intent to sue in any manner. Therefore, a present and actual controversy

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exists.

IV. VENUE

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1). A substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the District of Columbia. Defendant Administrator Pruitt is an officer of the United States, sued for acts and omissions in his official capacity as Administrator of the EPA, and EPA has its principal office in the District of Columbia.

V. PARTIES

7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3) organization. The Center for Biological Diversity has approximately 61,000 members throughout the United States and the world, including 86 members in Mississippi and 219 members in Alabama. The Center for Biological Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

8. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is a nonprofit organization that works to protect human health and the environment, helps protect the public from toxic chemicals, and promotes business products and practices that are safe for public health and the environment. The Center for Environmental Health works in pursuit of a world in which all people live, work, learn, and play in healthy environments.

9. Plaintiff SIERRA CLUB is the oldest and largest grassroots environmental organization in the United States, with 842,270 members nationally, including 1,625 members in Mississippi and 4,063 members in Alabama. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club performs this mission through advocacy, litigation, and educational outreach to its members and state chapters. Sierra Club and its members are greatly concerned about the effects of air pollution on human health and the environment and have a long history of involvement in activities related to air quality.

10. Plaintiffs' members live, work, recreate, travel and engage in other activities throughout the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiffs' members as well as their ability to engage in and enjoy their other activities. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and recreational opportunities and to work and engage in other activities of the affected areas.

11. EPA's failure to timely perform the mandatory duties described herein also adversely affects Plaintiffs, as well as their members, by depriving them of procedural protection and opportunities, as well as information that they are entitled to under the Clean Air Act. The failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members as to whether they are exposed to excess air pollution.

12. The above injuries will continue until the Court grants the relief requested herein.

13. Defendant SCOTT PRUITT is the Administrator of the EPA. In that role

Administrator Pruitt has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

VI. LEGAL BACKGROUND

14. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again." H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356.

15. To promote wholesome air, the Act requires that state plans to implement the Clean Air Act contain a provision that "any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to the permits or enforcement orders" under the Clean Air Act. 42 U.S.C. § 7428(a)(1). The Clean Air Act also requires that "any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed." 42 U.S.C. § 7428(a)(2).

16. The Clean Air Act required states to have these 42 U.S.C. § 7428(a) provisions in their state implementation plans by August 7, 1978.

17. Section 110(a)(2)(E)(ii) of the Clean Air Act also requires that state plans to implement the Clean Air Act for each new or revised national ambient air quality standard ("NAAQS") ensure that the state plan contain the provisions of 42 U.S.C. § 7428. *See* 42 U.S.C. § 7410(a)(2)(E)(ii).

18. If EPA disapproves a state implementation plan submittal, such as for failure to set forth provisions to comply with the requirements of 42 U.S.C. § 7428(a) for state boards,

EPA must promulgate a federal implementation plan ("FIP") to take the place of the disapproved submittal "at any time within 2 years" of the disapproval. 42 U.S.C. § 7410(c)(1)(B).

VII. FACTS

19. On March 2, 2015, EPA took final action to disapprove Clean Air Act section 110(a)(2)(E)(ii) of Mississippi's state implementation plan submittal pertaining to the Clean Air Act infrastructure requirements for the 2008 8-hour ozone NAAQS because it failed to meet the requirements of Clean Air Act section 128(a)(1). 80 Fed. Reg. 11,131, 11,132 (March 2, 2015). Specifically, EPA determined that the state plan failed to include a provision which required that at least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement orders. *See id.*

20. EPA's disapproval of Mississippi's state plan for failing to comply with 42 U.S.C. § 7410(a)(2)(E)(ii) and 42 U.S.C. § 7428(a)(1) was effective April 1, 2015. *See id.*

21. On April 2, 2015, EPA took final action to disapprove Clean Air Act section 110(a)(2)(E)(ii) of Alabama's state implementation plan submittal pertaining to the Clean Air Act infrastructure requirements for the 2008 8-hour ozone NAAQS because it failed to meet the requirements of Clean Air Act section 128(a)(1) & (2). 80 Fed. Reg. 17,689, 17,690 (April 2, 2015). Specifically, EPA determined that the state plan failed to include a provision which required that least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement orders and required that potential conflicts of interest of state boards and heads of executive agencies be adequately disclosed. *See id.*

22. EPA's disapproval of Alabama's state plan for failing to comply with 42 U.S.C. § 7410(a)(2)(E)(ii) and 42 U.S.C. § 7428(a)(1) and (2) was effective May 4, 2015. *Id.*

VIII. CLAIMS FOR RELIEF

CLAIM ONE

(Failure to Promulgate Mississippi FIP)

23. Plaintiffs incorporate by reference paragraphs 1 through 22.

24. EPA disapproved the 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Mississippi state implementation plan with regard to the 2008 ozone NAAQS because it does not require that a majority of members of boards that approve permits or enforcement orders in Mississippi do not derive a significant portion of income from persons subject to permits or enforcement orders issued by such Mississippi boards, and therefore, its current SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income.

25. This disapproval was effective April 1, 2015.

26. More than two years has passed since April 1, 2015

27. However, EPA has not promulgated a federal implementation plan to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Mississippi state implementation plan with regard to the 2008 ozone NAAQS.

28. Nor has EPA approved a state implementation plan or plan revision to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Mississippi state implementation plan with regard to the 2008 ozone NAAQS.

29. Therefore, EPA is in violation of its mandatory duty to promulgate a federal implementation plan, pursuant to 42 U.S.C. §7410(c)(1), requiring that the majority of members of boards that approve permits or enforcement orders in Mississippi do not derive a significant portion of income from persons subject to permits or enforcement orders issued by such

Mississippi boards.

CLAIM TWO

(Failure to Promulgate Alabama FIP)

30. Plaintiffs incorporate by reference paragraphs 1 through 22.

31. EPA disapproved the 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Alabama state implementation plan with regard to the 2008 ozone NAAQS because the Alabama state implementation plan did not contain provisions to comply with the requirements of section 128(a)(1) and (2) of the Clean Air Act.

32. This disapproval was effective May 4, 2015.

33. More than two years has passed since May 4, 2015

34. However, EPA has not promulgated a federal implementation plan to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Alabama state implementation plan with regard to the 2008 ozone NAAQS.

35. Nor has EPA approved a state implementation plan or plan revision to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Alabama state implementation plan with regard to the 2008 ozone NAAQS.

36. Therefore, EPA is in violation of its mandatory duty to promulgate a federal implementation plan, pursuant to 42 U.S.C. §7410(c)(1), requiring that the majority of members of boards that approve permits or enforcement orders in Alabama do not derive a significant portion of income from persons subject to permits or enforcement orders issued by such Alabama boards and requiring that any potential conflicts of interest by members of such boards or the head of an executive agency with similar powers be adequately disclosed.

.

IX. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare that the Administrator is in violation of the Clean Air Act with regard to his failure to perform the mandatory duties listed above;

B. Issue a mandatory injunction requiring the Administrator to perform his mandatory duties listed above by certain dates;

C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;

D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and experts' fees; and;

E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 28, 2017

/s/ Kathryn Amirpashaie

Kathryn M. Amirpashaie
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Counsel for Plaintiffs

ED_001650_00102998-00009

To: Smith, Kristi[Smith.Kristi@epa.gov]
From: Robert Ukeiley
Sent: Wed 5/3/2017 2:18:45 PM
Subject: FW: Activity in Case 1:17-cv-00818 CENTER FOR BIOLOGICAL DIVERSITY et al v. PRUITT Complaint
08 03 bump up ext civ cover.pdf
08 03 bump up ext complaint.pdf
08 03 bump up ext summons ag.pdf
08 03 bump up ext summons epa.pdf
08 03 bump up ext summons usa.pdf

Fyi

Robert Ukeiley
Law Office of Robert Ukeiley
255 Mountain Meadows Road
Boulder, CO 80302
Tel: **Ex. 6**
rukeiley@igc.org

I check email infrequently. If this is urgent, feel free to call.

-----Original Message-----
From: DCD_ECFNotice@dcd.uscourts.gov [mailto:DCD_ECFNotice@dcd.uscourts.gov]

Sent: Wednesday, May 03, 2017 7:52 AM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:17-cv-00818 CENTER FOR BIOLOGICAL DIVERSITY et al v. PRUITT Complaint

This is an automatic e-mail message generated by the CM/ECF system.
Please DO NOT RESPOND to this e-mail because the mail box is unattended.
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U.S. District Court
District of Columbia

Notice of Electronic Filing
The following transaction was entered by Ukeiley, Robert on 5/3/2017 9:51 AM and filed on 5/3/2017

Case Name: CENTER FOR BIOLOGICAL DIVERSITY et al v. PRUITT
Case Number: 1:17-cv-00818
https://ecf.dcd.uscourts.gov/cgi-bin/DktRpt.pl?186237

Filer: CENTER FOR BIOLOGICAL DIVERSITYCENTER
FOR ENVIRONMENTAL HEALTH

Document Number: 1

Copy the URL address from the line below into the location bar
of your Web browser to view the document:
https://ecf.dcd.uscourts.gov/doc1/04506043372?caseid=186237&de_seq_num=4&mag
ic_num=34965745

Docket Text:
COMPLAINT against SCOTT PRUITT
 (Filing fee $ 400 receipt number 0090-4937503) filed by CENTER
FOR BIOLOGICAL DIVERSITY, CENTER FOR ENVIRONMENTAL HEALTH. (Attachments:
(1) Civil Cover Sheet, # (2) Summons EPA, # (3) Summons Attorney General,

(4) Summons U.S. Attorney)(Ukeiley, Robert)

1:17-cv-00818 Notice has been electronically mailed to:
Robert Steven Ukeiley
rukeiley@igc.org

1:17-cv-00818 Notice will be delivered by other means to::

The following document(s) are associated with this transaction:
Document description: Main Document
Original filename: suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=5/3/2017] [FileNumber=5077846-0]
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9ba973e913134c69a0c32b5e3012aaf775cdb465652be6908ad7d]]

Document description: Civil Cover Sheet
Original filename: suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=5/3/2017] [FileNumber=5077846-1]
[8ac52f7bfd06d5bf16426cb55367acf83091ea975082fe58dbbe9222c7d1b1052c06e720de8
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Document description: Summons EPA
Original filename: suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=5/3/2017] [FileNumber=5077846-2]
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41400d9a0d13ec5884b4ff5eda9397e4dc114c4af5281590f5792]]

Document description: Summons Attorney General
Original filename: suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=5/3/2017] [FileNumber=5077846-3]
[70b28659584715ebf002205d404b2d62d57dd1ee919126a1f17ee97042923c6e4a23a21f182
21b481393d0cb2b6323691be434e6a4c44be82009dbd51e6a0c02]]

Document description: Summons U.S. Attorney
Original filename: suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=5/3/2017] [FileNumber=5077846-4]
[77566159882adc5a65f84cbc3a378b402957e0cb9d16eebf51be08149fef28b0f37c454da4b
3c1e32546457cc77712c496f6ce584f83e0ab6bb1a837209afede]]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY 1212 Broadway, Suite 800 Oakland, CA 94612 and CENTER FOR ENVIRONMENTAL HEALTH 2201 Broadway, Suite 302 Oakland, CA 94612 Plaintiffs, v. SCOTT PRUITT, in his official capacity as Administrator of the United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW Washington, D.C. 20460 Defendant.	CIVIL FILE ACTION NO. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Ground-level ozone is the principle component of what people commonly refer to as smog. Ozone pollution can cause decreased lung function, increased respiratory symptoms, emergency department visits, hospital admissions for respiratory causes, and even premature mortality. Those most at risk from ozone pollution are children; active people, *e.g.,* runners and

people who do manual labor outside; people with pre-existing lung and heart diseases such as asthma; and older people.

2. Ozone also damages vegetation, both native vegetation and commercial crops. Damage to native vegetation results in ecosystem damage, including diminished ecosystem services, that is, the life sustaining services that ecosystems provide to people for free, such as clean air, clean water and carbon sequestration.

3. To better protect the public from the damage caused by ozone pollution, the Administrator of the United States Environmental Protection Agency (EPA) promulgated revised ozone National Ambient Air Quality Standards (NAAQS) in 2008. EPA then designate areas with ambient air monitors showing ozone above the NAAQS as "nonattainment" and assign these nonattainment areas a level of nonattainment and a date by which the area must attain the 2008 ozone NAAQS.

4. The promulgation of revised ozone NAAQS creates various mandatory duties which EPA must perform in order to effectively implement the ozone NAAQS.

5. For nonattainment areas which fail to attain the 2008 ozone NAAQS by their attainment date, EPA has a mandatory duty to find that the areas failed to attain the 2008 ozone NAAQS by their attainment date, thus "bumping up" the nonattainment to the next level of nonattainment.

6. For the Metro-Philadelphia and Metro Washington D.C. marginal 2008 ozone NAAQS nonattainment areas, EPA is in violation of its mandatory duty to issue a final determination as to whether the areas have attained the 2008 ozone NAAQS by their attainment date and if not, to bump these areas up to moderate 2008 ozone NAAQS nonattainment areas.

7. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR

ENVIRONMENTAL HEALTH bring this action against Defendant SCOTT PRUITT, in his official capacity as Environmental Protection Agency Administrator, to compel him to perform his mandatory duties with respect to the 2008 ozone NAAQS.

JURISDICTION

8. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a) (Clean Air Act citizen suits).

9. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

NOTICE

10. On February 14, 2017, Plaintiffs mailed to EPA by certified mail, return receipt requested, a written notice of intent to sue regarding the violations alleged in this Complaint. EPA received Plaintiffs' notice of intent to sue letter by no later than February 21, 2017. More than sixty days have passed since EPA received this notice of intent to sue letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists between the parties.

VENUE

11. A substantial part of the alleged events or omissions giving rise to Plaintiffs' claims occurred in the District of Columbia. In addition, Defendant EPA resides in this judicial district. Accordingly, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

12. Plaintiff **CENTER FOR BIOLOGICAL DIVERSITY** is a non-profit 501(c)(3) corporation incorporated in California. The Center for Biological Diversity has approximately 52,000 members throughout the United States and the world. The Center for Biological Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

13. The Center for Biological Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational, conservation, recreational, and aesthetic values of the Metro-Philadelphia and Metro-Washington, D.C. 2008 ozone NAAQS marginal nonattainment areas. The Center for Biological Diversity's members and staff observe and study native species and their habitat in the Metro-Philadelphia and Metro-Washington, D.C. 2008 ozone NAAQS marginal nonattainment areas, and derive professional, scientific, educational, recreational, aesthetic, inspirational, and other benefits from these activities and have an interest in preserving

the possibility of such activities in the future. The Center for Biological Diversity and its members have participated in efforts to protect and preserve natural areas, including the habitat essential to the continued survival of native species, and to address threats to the continued existence of these species, including the threats posed by air pollution. EPA's compliance with its mandatory duties would redress these injuries to the Center for Biological Diversity's members

14. Plaintiff the **CENTER FOR ENVIRONMENTAL HEALTH** is an Oakland, California based non-profit organization that helps protect the public from toxic chemicals and promotes business products and practices that are safe for public health and the environment. The Center for Environmental Health works in pursuit of a world in which all people live, work, learn, and play in healthy environments.

15. Plaintiffs' members live, work, recreate, travel and engage in other activities throughout the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiffs' members as well as their ability to engage in and enjoy their other activities. Plaintiffs' members are compelled to breathe air less pure than that mandated by the Clean Air Act because of EPA's violation of its mandatory duties. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and recreational opportunities of the affected areas.

16. EPA's failure to timely perform the mandatory duties described herein also adversely affects Plaintiffs, as well as their members, by depriving them of procedural protection and opportunities, as well as information that they are entitled to under the Clean Air Act. The

failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members as to whether they are exposed to excess air pollution.

17. The above injuries will continue until the Court grants the relief requested herein.

18. Defendant **SCOTT PRUITT** is sued in his official capacity as the Administrator of the United States Environmental Protection Agency. In that role Administrator Pruitt has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

LEGAL BACKGROUND AND FACTS

19. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again." H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National Ambient Air Quality Standards for certain pollutants, including ozone. National Ambient Air Quality Standards establish maximum allowable concentrations in the air of these pollutants.

20. Each National Ambient Air Quality Standard is supposed to be stringent enough to protect public health and welfare. Effects on welfare include, but are not limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property, economic impacts and effects on personal comfort and well-being.

21. In 2008, EPA strengthened the primary and secondary ozone NAAQS from 0.08 to 0.075 parts per million. 73 Fed.Reg. 16,436 (Mar. 27, 2008).

22. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act

requires that EPA designate each area of the country as either a clean air area for that standard, which is known as "attainment" in Clean Air Act jargon, or a dirty air area, which is known as "nonattainment" in Clean Air Act jargon. See 42 U.S.C. § 7407(d).

23. EPA designated the Metro-Philadelphia and Metro-Washington, D.C. areas as marginal nonattainment areas for the 2008 ozone NAAQS.

24. The attainment date for areas designated as marginal nonattainment areas for the 2008 ozone NAAQS was originally July 20, 2015. 80 Fed. Reg. 51,992 (Aug. 27, 2015). However, for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and Washington, DC-MD-VA nonattainment areas, EPA extended the attainment date to July 20, 2016. 81 Fed. Reg. 26,697, 26,700 – 26,701 (May 4, 2016).

25. On April 18, 2017 EPA proposed to determine that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 ozone national ambient air quality standard (NAAQS) by the July 20, 2016 attainment date. 82 Fed. Reg. 18,268 (April 18, 2017). On April 25, 2017 EPA proposed to determine that the Washington, DC-MD-VA marginal ozone nonattainment area has attained the 2008 ozone national ambient air quality standard (NAAQS) by the July 20, 2016 attainment date. 82 Fed. Reg. 19,011 (April 25, 2017). As of the date of this filing EPA has not finalized these proposed rules. These proposed rules create no environmental benefit and have no legal impact.

CLAIMS FOR RELIEF

CLAIM ONE

(Failure to make Bump Up determination for Metro-Philadelphia)

26. Plaintiffs incorporate by reference all paragraphs listed above.

27. Pursuant to 42 U.S.C. §§ 7509(c)(1) & 7511(b)(2)(A), EPA has a nondiscretionary duty to make a final determination by no later than six months after the attainment date, that is January 20, 2017, whether the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2008 ozone NAAQS marginal nonattainment area attained the 2008 ozone NAAQS by its July 20, 2016 attainment date.

28. EPA has failed to make such a final determination

29. Furthermore, pursuant to 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), EPA has a nondiscretionary duty to publish a final notice in the Federal Register no later than January 20, 2017 identifying whether the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal nonattainment areas attained the 2008 ozone NAAQS by its attainment date.

30. EPA has failed to publish such a notice.

31. Accordingly, EPA is violation of its mandatory duties under 42 U.S.C. §§ 7509(c)(1), 7511(b)(2)(A) and 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), to determine whether the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal 2008 ozone NAAQS nonattainment area attained the 2008 ozone NAAQS by its attainment date and publish notice of such determination.

CLAIM TWO

(Failure to make Bump Up determination for Metro-Washington D.C.)

32. Plaintiffs incorporate by reference all paragraphs listed above.

33. Pursuant to 42 U.S.C. §§ 7509(c)(1) & 7511(b)(2)(A), EPA has a nondiscretionary duty to determine by no later than six months after the attainment date, that is January 20, 2017, whether the Washington, DC-MD-VA 2008 ozone NAAQS marginal nonattainment area attained the 2008 ozone NAAQS by its July 20, 2016 attainment date.

34. EPA has failed to make such a final determination

35. Furthermore, pursuant to 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), EPA has a nondiscretionary duty to publish a final notice in the Federal Register no later than January 20, 2017 identifying whether the Washington, DC-MD-VA marginal nonattainment areas attained the 2008 ozone NAAQS by its attainment date.

36. EPA has failed to publish such a notice.

37. Accordingly, EPA is violation of its mandatory duties under 42 U.S.C. §§ 7509(c)(1), 7511(b)(2)(A) and 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), to determine whether the Washington, DC-MD-VA marginal 2008 ozone NAAQS nonattainment area attained the 2008 ozone NAAQS by its attainment date and publish notice of such determination.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare that the Administrator is in violation of the Clean Air Act with regard to his failure to perform each mandatory duty listed above;

B. Issue a mandatory injunction requiring the Administrator to perform his mandatory duties by certain dates;

C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's

order;

D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees; and

E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Robert Ukeiley

Robert Ukeiley
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rukeiley@igc.org

Counsel for Plaintiffs Center for Biological Diversity and Center for Environmental Health

Dated: May 3, 2017

ED_001650_00103920-00010

To: Smith, Kristi[Smith.Kristi@epa.gov]
Cc: Joshua Berman[josh.berman@sierraclub.org]; Philip Goo[goolawoffice@gmail.com]
From: Zachary Fabish
Sent: Sat 3/11/2017 12:48:14 AM
Subject: Notice of Intent to Sue under the Federal Clean Air Act
Sierra Club NOI to EPA - CT Section 126 Petition on Brunner Island -3.10.17.pdf

Kristi,

Please find attached a Notice of Intent to Sue under the Federal Clean Air Act from the Sierra Club, concerning Connecticut's petition under Clean Air Act section 126. A copy was sent earlier today via email to the Administrator, and a hard copy was likewise hand-delivered to the Agency.

Please let me know if there is additional information we can provide.

Thank you,

-Zack

--
Zachary M. Fabish
Staff Attorney
50 F Street, NW - 8th Floor
Washington, DC 20001
Ex. 6
(202) 547-6009 (fax)
zachary.fabish@sierraclub.org

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This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions on your system. Thank you.

March 10, 2017

VIA ELECTRONIC MAIL AND HAND DELIVERY

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator Scott Pruitt:

This letter provides notice that the Sierra Club intends to file a citizen suit against the United States Environmental Protection Agency ("EPA") and the Administrator of the EPA, based on EPA's failure to perform a nondiscretionary duty pursuant to Section 126 of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7426(b), to either grant or deny the Connecticut Department of Energy and Environmental Protection's ("Connecticut") June 1, 2016 petition concerning the Brunner Island Steam Electric Station ("Brunner Island" or "the Plant") in York County, Pennsylvania. This notice is provided pursuant to 42 U.S.C. § 7604(b).

On June 1, 2016, Connecticut petitioned EPA to make a finding that Brunner Island is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standards ("NAAQS") in Connecticut. Pursuant to 42 U.S.C. § 7426(b), EPA was required to grant or deny the petition within 60 days. On July 25, 2016, in order to complete its technical analyses and public notice and comment processes, EPA extended its response deadline to January 25, 2017.

I. Citizens May Sue EPA for Failure to Timely Grant or Deny a Section 126 Petition

Section 304(a)(2) of the CAA provides that any person can sue the Administrator of the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary." 42 U.S.C. § 7604(a)(2). Section 126 of the CAA expressly provides that "[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator *shall* make such a finding or deny the petition." 42 U.S.C. § 7426(b) (emphasis added). This provision imposes a mandatory, nondiscretionary duty upon EPA to act within 60 days of the filing of a petition under this section. EPA extended the deadline to January 25, 2017, but has still failed to perform this nondiscretionary duty. Accordingly, citizens may bring suit to compel such action.

II. Sierra Club Intends to File a Citizen Suit

As stated above, Connecticut filed a Section 126 petition to make a finding that Brunner Island is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in Connecticut. EPA extended its 60 day response deadline to January 25, 2017. Yet, as of the date of this notice, the Administrator has not yet granted or denied Connecticut's petition. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Connecticut's Petition and is in violation of 42 U.S.C. § 7426(b).

The CAA requires citizens to provide the Administrator with 60 days' notice prior to bringing an action under Section 304(a)(2). 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. 54.2(a). Accordingly, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit against EPA and the Administrator of the EPA, under CAA Section 304(a)(2) for failing to perform the nondiscretionary duty of granting or denying Connecticut's Section 126 petition. If the violation remains unresolved at the end of the 60-day notice period, Sierra Club intends to seek the following relief:

1. An order compelling EPA and the Administrator to grant or deny Connecticut's Petition within 60 days from the date of the order;
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matters identified in this letter or offer a proposal for resolving these issues, please contact me directly at zachary.fabish@sierraclub.org or (202) 675-7917.

Sincerely,

/s/

Zachary M. Fabish, Esq.
The Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20009
Tel.: 202.675.7917
E-mail: zachary.fabish@sierraclub.org
Counsel for the Sierra Club

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Counsel for the Sierra Club

To: Joshua Smith[joshua.smith@sierraclub.org]
Cc: Elena Saxonhouse[elena.saxonhouse@sierraclub.org]; Smith, Suzanne[Smith.Suzanne@epa.gov]
From: Smith, Kristi
Sent: Tue 11/8/2016 6:29:26 PM
Subject: RE: Texas Ozone SIP

Thank you. I will forward this to DOJ, which will start the attorney assignment process.

- Kristi

Kristi M. Smith * Assistant General Counsel for the NAAQS Implementation Group * Air & Radiation Law Office * US EPA, Office of General Counsel * smith.kristi@epa.gov * (202) 564-3068 *

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Joshua Smith [mailto:joshua.smith@sierraclub.org]
Sent: Tuesday, November 08, 2016 12:40 PM
To: Smith, Kristi <Smith.Kristi@epa.gov>
Cc: Elena Saxonhouse <elena.saxonhouse@sierraclub.org>; Smith, Suzanne <Smith.Suzanne@epa.gov>
Subject: Re: Texas Ozone SIP

Kristi and Suzanne,

Thanks for your quick responses, and thank you for taking the time out of your schedule to discuss this petition.

We did file our petition for review in the Fifth Circuit. Although the case has not yet been docketed, I received verbal confirmation from the clerk of the court that it is being processed. I'll update you as soon as the court dockets the case, which may take a day or two; in the meantime, here is a copy of the filing.

Let me know when you're able to get a DOJ attorney assigned the case, so that we can discuss the possibility of holding the litigation in abeyance.

Thank you,

Josh

On Mon, Nov 7, 2016 at 10:10 AM, Smith, Kristi <Smith.Kristi@epa.gov> wrote:

Josh –

Please let me know as soon as your petition is filed, so we can get a DOJ attorney assigned. Then we can bring them up to speed regarding the plan to hold the case in abeyance pending the larger settlement talks going on in TX Regional Haze.

- Kristi

Kristi M. Smith * Assistant General Counsel for the NAAQS Implementation Group * Air & Radiation Law Office * US EPA, Office of General Counsel * smith.kristi@epa.gov * (202) 564-3068 *

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From: Joshua Smith [mailto:joshua.smith@sierraclub.org]
Sent: Monday, November 07, 2016 12:33 PM
To: Smith, Kristi <Smith.Kristi@epa.gov>
Cc: Elena Saxonhouse <elena.saxonhouse@sierraclub.org>; Smith, Suzanne <Smith.Suzanne@epa.gov>
Subject: Re: Texas Ozone SIP

Kristi,

Thank you for taking the time to talk on Friday. I greatly appreciate it.

One follow-up clarification. As I mentioned on Friday, we think it makes sense to file a motion to hold the SIP litigation in abeyance so as to allow a little more time for these settlement discussions play out. And if EPA is amenable, we would prefer to file a *joint* motion.

So, if you have a chance, I think it would be helpful to loop in DOJ in the coming days, so that we can start the process of seeking to hold the case in abeyance.

Thanks,

Josh

On Fri, Nov 4, 2016 at 12:52 PM, Joshua Smith <joshua.smith@sierraclub.org> wrote:

> Thanks for the prompt response, Kristi.
>
> Apologies for not being clearer: yes, we would be challenging only the September 9 action, and in particular whether the Texas ISIP complies with section 110(a)(2)(A). Not the recent direct rule relating to section 110(a)(2)(J).
>
> I think Elena and I are both available this afternoon, as well. Would you be able to hop on a call at 4:30 or 5:00 pm ET? I don't think it would take more than 20-30 minutes to fill you in.

Thanks,

Josh

On Fri, Nov 4, 2016 at 12:47 PM, Smith, Kristi <Smith.Kristi@epa.gov> wrote:

Josh –

Please disregard my message below. I realize that I was looking at the later FRN notice on this same action and not the FR notice you referenced. I'd be happy to talk about the larger final action on this iSIP notice.

I apologize for my confusion and first e-mail response.

- Kristi

Kristi M. Smith * Assistant General Counsel for the NAAQS Implementation Group * Air & Radiation Law Office * US EPA, Office of General Counsel * smith.kristi@epa.gov * (202) 564-3068 *

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From: Smith, Kristi
Sent: Friday, November 04, 2016 3:26 PM
To: 'Joshua Smith' <joshua.smith@sierraclub.org>
Cc: Elena Saxonhouse <elena.saxonhouse@sierraclub.org>; Smith, Suzanne <Smith.Suzanne@epa.gov>
Subject: RE: Texas Ozone SIP

Josh –

I would be open to talking. I'm available until 5:30 today.

However, I note that the time filing a petition for judicial review of this action is not next week. Rather, the rule you reference was a direct final rule with a parallel proposal, and the deadline for filing comments on the proposal is next week. As stated clearly in the rule:

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on December 6, 2016 without further notice unless we receive relevant adverse comment by November 7, 2016. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

So if you have any comments regarding this action, you should file comments and then we will withdraw this rule before its effective date and issue a new final rule that addresses those comments.

- Kristi

Kristi M. Smith * Assistant General Counsel for the NAAQS Implementation Group * Air &

Radiation Law Office * US EPA, Office of General Counsel * smith.kristi@epa.gov * (202) 564-3068 *

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From: Joshua Smith [mailto:joshua.smith@sierraclub.org]
Sent: Friday, November 04, 2016 2:17 PM
To: Smith, Kristi <Smith.Kristi@epa.gov>
Cc: Elena Saxonhouse <elena.saxonhouse@sierraclub.org>
Subject: Texas Ozone SIP

CONFIDENTIAL SETTLEMENT COMMUNICATION/JOINT PROSECUTION PRIVILEGED

Good morning Kristi,

I hope all is well. I recently reached out to Suzanne Smith about EPA's final approval of the Texas Infrastructure State Implementation Plan for the 2008 Ozone standard, 81 Fed. Reg. 62375, EPA Docket No. EPA–R06–OAR–2012–0953; FRL–9950–77– Region 6.

Sierra Club will likely file a petition for review of that approval early next week--the deadline is November 8.

I wanted to bring you into the loop because the ozone SIP litigation has potential implications for several of the generators in the regional haze case, and is therefore indirectly related to our settlement talks.

Might you have a few minutes today or Monday to discuss the potential litigation, and how it might affect (or be affected by) our settlement discussions?

Thanks,

Josh

--

Joshua Smith

Staff Attorney

Sierra Club Environmental Law Program

2101 Webster St., Suite 1300

Oakland, CA 94612

Ex. 6

(415)977-5793 (fax)

Ex. 6 cell)

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--

Joshua Smith

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