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November 25, 2019

Amy Hambrick
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
US Environmental Protection Agency
Attention: Docket ID No. EPA-HQ-OAR-2017-0757
Mail Code 28221T, 1200 Pennsylvania Avenue NW
Washington, DC 20460

**RE: NTAA Comments on EPA's Proposed Rule: Oil and Natural Gas Sector:
Emission Standards for New, Reconstructed, and Modified Sources
Reconsideration**

Dear Ms. Hambrick:

EPA's proper regulation of methane from the oil and natural gas industry under the Clean Air Act is important to Tribes and Tribal air departments. As such, the National Tribal Air Association (NTAA) has previously submitted comments in support of the 2016 standards that established the methane standards that are the subject of this proposal, as well as in opposition to the 2018 proposed modifications to those standards that have not been finalized.¹ The NTAA is pleased to submit these comments on EPA's September 24, 2019 proposal titled, "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration" (Proposed Rule).²

The NTAA is a member-based organization with 148 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

¹ See Comment submitted by Bill Thompson, Chairman, National Tribal Air Association (NTAA), Docket ID No. EPA-HQ-OAR-2010-0505, Nov. 18, 2015, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-6705>; Comment submitted by Wilfred J. Nabahe, Chairman, National Tribal Air Association (NTAA), Docket ID No. EPA-HQ-OAR-2017-0483, Dec. 17, 2018, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0483-1011>.

² Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 84 Fed. Reg. 50244 (Sept. 24, 2019).



EPA is proposing significant changes to the regulation of methane, a potent greenhouse gas, from its largest domestic source: the oil and natural gas industry. Because both of the proposed alternatives will arbitrarily and unlawfully result in an increase of harmful emissions, NTAA opposes the proposed changes. NTAA urges EPA to maintain methane emission standards of performance for the oil and gas industry sector, including transmission and storage facilities.

I. Background

The Clean Air Act (CAA) was passed “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.”³ Section 111 of the CAA directs EPA to publish a list of categories of stationary sources that cause or contribute significantly to air pollution, which “may reasonably be anticipated to endanger public health or welfare.”⁴ Section 111 then requires EPA to establish New Source Performance Standards (NSPS) to control emissions from new and modified sources within that category.⁵ EPA must set standards that reflect the “best system of emissions reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.”⁶ Section 111(d) requires EPA to then establish standards from existing sources within that category, unless the pollutant meets certain exceptions.

EPA has regulated the oil and gas sector under § 111 since 1979.⁷ In 1985, EPA promulgated NSPS for volatile organic compounds (VOC) and sulfur dioxide emissions from natural gas processing plants.⁸ In 2012, EPA updated the standards and established VOC NSPS for oil and natural gas-related operations, including gas well completions, centrifugal and reciprocating compressors, natural gas operated pneumatic controllers, and storage vessels.⁹ EPA issued new NSPS in 2016 to reduce releases of methane from the oil and gas sector (excluding distribution).¹⁰ The 2016 NSPS set requirements for methane emissions, further regulated VOC, and included additional sources not covered in the 2012 NSPS.¹¹ It set cost-effective controls that reduce both

³ 42 U.S.C. § 7401(b).

⁴ *Id.* § 7411(b).

⁵ *Id.*

⁶ *Id.* § 7411(a)(1), (b)(1).

⁷ Priority List and Additions to the List of Categories of Stationary Sources, 44 Fed. Reg. 49222, 49226 (Aug. 21, 1979).

⁸ Standards of Performance for New Stationary Sources; Equipment Leaks of VOC From Onshore Natural Gas Processing Plants, 50 Fed. Reg. 26122 (June 24, 1985), Standards of Performance for New Stationary Sources; Onshore Natural Gas Processing SO₂ Emissions, 50 Fed. Reg. 40158 (Oct. 1, 1985).

⁹ Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 77 Fed. Reg. 49490 (Aug. 16, 2012).

¹⁰ Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35824 (June 3, 2016).

¹¹ *Id.* at 35825.



methane and VOC emissions from equipment across the industry.¹² These standards are important as the oil and gas industry sector emits enormous quantities of methane and volatile organic compounds: Recent data indicates that the oil and natural gas sector accounts for nearly 30% of U.S. methane emissions, while methane is 25 times more potent than CO₂ as a heat-trapping gas.¹³

On March 28, 2017, President Trump issued Executive Order 13783 to promote energy independence and economic growth.¹⁴ Among other things, the Executive Order directed EPA to review and rescind regulations that unduly burden the development of domestic energy.¹⁵ In response to the Executive Order, EPA published the Proposed Rule. EPA first proposes to separate oil and natural gas production and processing from oil and natural gas transmission and storage, claiming its decision to regulate transmission and storage in 2012 and 2016 exceeded the agency's authority.¹⁶ EPA also proposes to rescind the methane NSPS for the redefined oil and natural gas category, made up only of the production and processing segment.¹⁷ The Proposed Rule claims that EPA lacked a rational basis to establish these standards in the first place because the methane NSPS are “wholly redundant” with the VOC NSPS and thus are unnecessary.¹⁸ As the Proposed Rule recognizes, this will prevent EPA from regulating methane emissions from existing sources, which would have been required under Section 111(d).¹⁹ The Proposed Rule asserts that this will not cause “a *substantial* amount” of lost emission reductions, without describing what EPA considers substantial. EPA claims that this loss of emission reductions will not be substantial because many existing sources will retire or modify themselves, existing sources have market incentives to reduce methane emissions or may participate in voluntary programs to do so, or existing sources may be subject to state methane requirements.²⁰

¹² *Id.* at 35826-27.

¹³ Overview of Greenhouse Gases: Methane Emissions, United States Env'tl. Prot. Agency, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases#methane>; *see also* 84 Fed. Reg. at 50249.

¹⁴ Promoting Energy Independence and Economic Growth, Exec. Order 13783 of March 28, 2017, 82 Fed. Reg. 16093 (Mar. 31, 2017).

¹⁵ *Id.* Neither promoting energy independence and economic growth is not a goal of the Clean Air Act, and an Executive Order cannot change Clean Air Act requirements enacted by Congress. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588-89 (1952) (President cannot use Executive Order to promote policy goals in the absence of statutory or constitutional authority); *id.* at 637-38; (Jackson, J., concurring) (“When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb”); *In re Aiken County*, 725 F.3d 255, 259 (D.C. Cir. 2013) (“[T]he President may not decline to follow a statutory mandate or prohibition simply because of policy objections.”). Changes made to the NSPS must be consistent with the statutory language of the Clean Air Act and the policy integral to the Clean Air Act of protecting and enhancing the quality of the Nation’s air.

¹⁶ 84 Fed. Reg. at 50256-57.

¹⁷ *Id.* at 50259-30.

¹⁸ *Id.* at 50259.

¹⁹ *Id.* at 50271.

²⁰ *Id.* (emphasis added); *see also id.* at 50271-77.



Alternatively, EPA proposes to rescind the methane requirements applicable to the current oil and natural gas sources in the category, without removing the transmission and storage segment.²¹ The Proposed Rule would justify this alternative using the same claims as its primary proposal: that the methane requirements are “entirely redundant” with the existing VOC NSPS.²²

NTAA has several concerns regarding the agency’s proposed change in policy. These amendments would cause negative impacts on air quality and public welfare in Indian Country because the rule, even by EPA’s estimates, will result in increased methane, VOC, and hazardous air pollutant (HAP) emissions.²³ The Proposed Rule’s analysis of these impacts, both generally and in Indian Country, is insufficient. The Proposed Rule will unreasonably exclude the majority of the oil and gas infrastructure – the transmission (pipelines) and storage facilities located in every state and on many Tribe’s lands in the country. Additionally, the Proposed Rule, under either approach, will unlawfully prevent the regulation of methane from existing sources. NTAA opposes both alternatives and recommends upholding and strengthening the 2016 NSPS.

II. The Proposed Rule Will Result in Increased Emissions that Harm Tribes and the General Public

A. The Proposed Rule Will Result in Increased Emissions that Cause Climate Change and Disproportionately Harm Tribal Communities

Methane is an extremely potent greenhouse gas with at least 25 times the global warming potential of carbon dioxide.²⁴ The Proposed Rule, which states that it will cause more methane emissions,²⁵ will thus further exacerbate the environmental and health impacts of climate change. However, the Proposed Rule merely lumps these negative impacts into a dollar value and does not analyze the climate change impacts it will have on Tribal communities.

²¹ *Id.* at 50,260-61.

²² *Id.*

²³ *Id.* at 50278.

²⁴ Overview of Greenhouse Gases: Methane Emissions, United States Env’tl. Prot. Agency, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases#methane>; *see also* 84 Fed. Reg. at 50249. In 2013, the Intergovernmental Panel on Climate Change released its Fifth Assessment Report (“AR5”), revising upward its earlier 100-year global warming potential for fossil methane from 25 to 36, yet EPA continues to use the lower, outdated figure from the earlier report. IPCC, Fifth Assessment Report, Climate Change 2013 The Physical Science Basis, Chapter 8: Anthropogenic and Natural Radiative Forcing (Sept. 2013), at 714, Table 8.7, available at https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_Chapter08_FINAL.pdf.

²⁵ 84 Fed. Reg. at 50278.



The Fourth National Climate Assessment documents that: “Climate change increasingly threatens Indigenous communities’ livelihoods, economies, health, and cultural identities by disrupting interconnected social, physical, and ecological systems.”²⁶ Tribal individuals in the United States pursue a mix of traditional subsistence and commercial sector activities that include agriculture, hunting and gathering, fishing, forestry, energy, recreation, and tourism enterprises.²⁷ Observed and projected changes of increased wildfire, diminished snowpack, pervasive drought, flooding, ocean acidification, and sea level rise threaten the viability of these enterprises.²⁸ Tribal agriculture is already being adversely affected by changing patterns of flooding, drought, dust storms, and rising temperatures, with future projections varying but indicating increased soil erosion and irrigation water demand and decreased crop quality and animal herd sizes.²⁹ Tribal communities are also vulnerable to infrastructure disruptions that can occur at the level of an individual household (such as housing and sanitary water supply); within larger regional, integrated systems (such as for power, transportation, and telecommunication); or within human systems that rely on such infrastructure to provide other essential services (such as emergency medical response).³⁰

In general, Tribal communities have disproportionately high rates of asthma, cardiovascular disease, Alzheimer’s or dementia, diabetes, and obesity.³¹ These health disparities have direct linkages to increased vulnerability to climate change. For example, diabetes rates within federally recognized Tribes are about twice that of the general U.S. population, and people with diabetes are more sensitive to extreme heat and air pollution.³² Increased climate change vulnerability also extends to communities that are low-income, which are less able to insulate themselves from the impacts of global changes, and to populations that are geographically mandated in locations, which hinder their ability to move away from climate change impacts. Both situations are particularly indicative of Tribal communities.

²⁶ USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

²⁷ Kathryn Norton-Smith et. al. 2016. “Climate change and Indigenous Peoples: a Synthesis of Current Impacts and Experiences”. Gen. Tech. Rep. PNW-GTR-944. Portland, OR: U.S. Dep’t of Agric., Forest Serv., Pac. Nw. Research Station. Pgs 1-138, https://www.fs.fed.us/pnw/pubs/pnw_gtr944.pdf; see also Kathy Lynn et. al, “The impacts of climate change on Tribal traditional foods,” *Climate Change* 120:545-556, 547 (2013).

²⁸ *Id.*

²⁹ *Id.*

³⁰ USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

³¹ *Id.*

³² *Id.*



Courts have long recognized the federal trust responsibility,³³ as have Congress and federal agencies, including EPA. EPA issued its Indian Policy in 1984,³⁴ and has reaffirmed it ever since.³⁵ In its Indian Policy, EPA recognizes the federal trust responsibility and states it will “give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands.”³⁶

In addition, Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” mandates that every federal agency “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States[.]”³⁷ The Proposed Rule states that “EPA believes that this proposed action is unlikely to have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous populations,”³⁸ but as explained above, Tribes disproportionately bear the burden of negative climate change impacts, that the proposal will increase. The Proposed Rule does not appear to have analyzed environmental justice at all, contrary to EPA’s stated goal “to understand definitions of human health and the environment from the perspective of federally recognized tribes.”³⁹

While NTAA appreciates EPA’s informational webinar explaining the Proposed Rule, NTAA is disheartened by EPA’s failure to analyze Tribal impacts and properly consult with Tribes from the outset of its decision-making that indisputably impacts Tribes. EPA actions that cause increased emissions of harmful climate-changing pollutants such as methane not only do not protect Indian Tribes from the disproportionate impacts of climate change but further exacerbate the negative effects experienced by Tribes. Meaningful consultation cannot occur until EPA considers the

³³ See, e.g., *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (United States has “moral obligations of the highest responsibility and trust”).

³⁴ EPA Policy for the Administration of Environmental Programs on Indian Reservations, William D. Ruckelshaus (Nov. 8, 1984), <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>.

³⁵ See, e.g., Reaffirmation of the U.S. Environmental Protection Agency’s Indian Policy, E. Scott Pruitt (Oct. 11, 2017), https://www.epa.gov/sites/production/files/2018-03/documents/11oct17_epa_reaffirmation_pruitt.pdf.

³⁶ EPA Policy for the Administration of Environmental Programs on Indian Reservations, William D. Ruckelshaus, at 1 (Nov. 8, 1984), <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>.

³⁷ Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order 12898 of Feb. 11, 1994, 59 Fed. Reg. 7629 (Feb. 16, 1994).

³⁸ 84 Fed. Reg. at 50283.

³⁹ EPA, Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples (2014), at 2. EPA Guidance on Considering Environmental Justice During the Development of Regulatory Actions also explains that “some level of analysis is needed, be it qualitative, quantitative, or some combination of both.” Guidance on Considering Environmental Justice During the Development of Regulatory Actions, May 2015, at 15, <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>.



impacts its regulatory proposals have on Tribes and participates in a back and forth iterative discussion on how to address those impacts. Instead of fulfilling the government's obligations, the Proposed Rule merely asserts that it does not have Tribal implications as specified in Executive Order 13175.⁴⁰

The Proposed Rule ignores that EPA's estimates of methane emissions from the oil and natural gas industry are severely underestimated. A recent study synthesized previously published data to quantify methane emissions across the oil and gas industry and found that methane emissions from the sector were 60% higher than estimated by EPA's inventory.⁴¹ The study explained "that sampling methods underlying conventional inventories systematically underestimate total emissions because they miss high emissions caused by abnormal operating conditions (e.g., malfunctions)."⁴² Other studies have reached similar conclusions.⁴³ The Proposed Rule will, therefore, likely result in greater emissions of methane than EPA estimates and will cause more climate, human health, and air quality harms than EPA both estimates and leaves unquantified. The need to maintain the 2016 NSPS is, therefore, more urgent. While EPA estimates the Proposed Rule would reduce compliance costs for the industry by \$18 to 24 million a year,⁴⁴ a tiny percentage of the industry's overall revenue, it is arbitrary and capricious for EPA to compare this number to harm that EPA did not fully evaluate using the best available evidence of emissions.

The 2016 NSPS calculated climate benefits based on the global social cost of methane, in part because, as the EPA recognized "[t]he impacts of climate change outside the United States . . . will also have relevant consequences on the United States and our citizens."⁴⁵ This cost estimate was scientifically supported and peer-reviewed.⁴⁶ The Proposed Rule recognizes that it will create climate harms from increased methane emissions by removing transmission and storage requirements.⁴⁷ Ignoring the best available science, the Proposed Rule estimates a dollar value of

⁴⁰ 84 Fed. Reg. at 50282.

⁴¹ Ramón A. Alvarez et. al, *Assessment of Methane Emissions from the U.S. Oil and Gas Supply Chain*, 361 *Science* 186 (July 13, 2019), available at <https://science.sciencemag.org/content/361/6398/186>.

⁴² *Id.*

⁴³ See, e.g., Daniel Zavala-Araiza, et al., *Reconciling Divergent Estimates of Oil and Gas Methane Emissions*, 112 (51) *PNAS* 15,597 (Dec. 7, 2015), available at <http://www.pnas.org/content/112/51/15597>; Gabrielle Pétron et al., *A New Look at Methane and Nonmethane Hydrocarbon Emissions from Oil and Natural Gas Operations in the Colorado Denver-Julesburg Basin*, 119 *J. Geophysical Research: Atmospheres* 6,836 (June 3, 2014) available at <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2013JD021272>; A.R. Brandt et. al, *Methane Leaks from North American Natural Gas Systems*, 343 *Science* 711 (Feb. 14, 2014), available at https://nature.berkeley.edu/er100/readings/Brandt_2014.pdf.

⁴⁴ 84 Fed. Reg. at 50278.

⁴⁵ 81 Fed. Reg. at 35836.

⁴⁶ See 81 Fed. Reg. at 35887-88.

⁴⁷ See, e.g., *id.* at 50279.



“foregone domestic climate benefits,” or climate related harms it will cause domestically, based on an interim estimate of the domestic social cost of methane.⁴⁸ Similar to other unlawful federal regulatory actions,⁴⁹ EPA claims it is using this interim measure until an improved estimate can be developed based on the best available science and economics, and that will take into account a January 2017 National Academies of Sciences, Engineering, and Medicine report.⁵⁰ But EPA cannot rely on this interim estimate as it is inconsistent with peer-reviewed science and expert recommendations. The Proposed Rule makes no attempt to reconcile the contradiction.

The Proposed Rule also does not account for the harm caused by methane from existing sources in the oil and natural gas industry that the Proposed Rule would prevent from being regulated.⁵¹

The Proposed Rule fails to identify and analyze the environmental impacts of the proposal adequately, and fails to consider the severe and growing harms associated with climate change and the urgency of reducing greenhouse gas pollution both for the general public and specifically for Tribal communities.

B. The Proposed Rule Will Result in Increased Emissions that Harm Air Quality and Public Health

The Proposed Rule estimates that nearly 30 percent of U.S. methane emissions come from oil and natural gas production and processing.⁵² According to the *Oil and Gas Threat Map*, 12.6 million people live within a half mile of active oil and gas wells, compressors, and processors and the map reports instances of elevated cancer and respiratory risk in 238 counties in the United States.⁵³

EPA’s Regulatory Impact Analysis (RIA) states that the proposed amendments are expected to increase emissions by 370,000 tons of methane, 10,000 tons of VOC, and 300 tons of HAPs over a six-year period relative to the current regulatory baseline from 2019 to 2025.⁵⁴ EPA expects the additional HAPs and VOC co-emitted along with methane will adversely impact air quality and health of many communities.⁵⁵ Despite recognizing a commonly used methodology to do so, EPA

⁴⁸ *Id.*; RIA at 1-4, 3-8 to 3-9

⁴⁹ Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49184, 49190 (Sept. 18, 2018).

⁵⁰ RIA at 3-8 to 3-9.

⁵¹ *See* Section III.B. *infra*; 84 Fed. Reg. at 50271.

⁵² *Id.* at 50249.

⁵³ Oil & Gas Threat Map 2.0, <https://oilandgasthreatmap.com/threat-map/> (last visited Oct. 28, 2019); Threat Radius, <https://oilandgasthreatmap.com/about/threat/> (last visited Oct. 28, 2019).

⁵⁴ 84 Fed. Reg. at 50278.

⁵⁵ *Id.* at 50279.



fails to provide estimates of costs related to the health impacts of increased emissions from the Proposed Rule.⁵⁶ Even short of monetizing the benefits, the Proposed Rule does not attempt to evaluate the negative health impacts or weigh them against the purported benefits. Without this evaluation, EPA cannot finalize the Proposed Rule.

NTAA is concerned about HAPs, methane, and VOC emitted throughout the oil and natural gas development cycle. HAPs such as benzene, toluene, ethylbenzene, xylenes, and n-hexane are linked to numerous human health hazards, including cancer and reproductive, developmental, and neurological damage.⁵⁷ Similarly, VOC contributes to smog formation, which can lead to childhood asthma attacks and even premature death. Methane and VOC are precursors to ground-level ozone, which contribute to several harmful health and environmental impacts.⁵⁸

According to the Department of Energy data, there are over 3,465 oil and gas wells and over 16,000 miles of oil and natural gas pipelines located on Tribal lands.⁵⁹ Yet, Tribal impacts were not considered in the proposed rule or regulatory impact analysis (violating EPA's Policy on Consultation and Coordination with Indian Tribes⁶⁰). Any Tribe that has new, modified, or existing oil or natural gas wells, pipelines, and storage facilities on or near Tribal land will suffer from increased methane, VOC, and HAP emissions. Tribal communities are disproportionately susceptible to health effects of air pollution. Studies show that Native Americans and Alaska Natives have a disproportionate incidence of asthma and are at risk from exposure to ozone. American Indian and Alaska Native children are 60 percent more likely to have asthma as non-Hispanic white children.⁶¹ Requiring the oil and gas industry to reduce methane, VOC, and HAP emissions through the 2016 NSPS would improve air quality, which in turn would improve health outcomes.

III. NTAA Opposes Both Aspects of the Primary Proposal

A. NTAA Opposes the Proposal to Exclude Transmission, Pipelines, and Storage from the Oil and Natural Gas Source Category

⁵⁶ *Id.*; see also Regulatory Impact Analysis for the Proposed Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review (RIA), EPA-452/R-19-001, at 3-2 (Aug. 2019).

⁵⁷ RIA at 3-19 to 3-27.

⁵⁸ See Ground-Level Ozone Pollution, United States Env'tl. Prot. Agency, <https://www.epa.gov/ground-level-ozone-pollution>; Wiecks, Joy, Dara Marks-Marino, Jaime Yazzie, *National Tribal Air Association's Supplement to 2019 Status of Tribal Air Report (STAR): A White Paper Detailing the Science and Connections Between Air Pollution, Tribes, and Public Health*, National Tribal Air Association, Sept. 2019, <http://www7.nau.edu/itep/main/ntaa/PDF/WP19AirPolHeath>.

⁵⁹ U.S. Department of Energy Office of Indian Energy (September 2015). Tribal Energy System Vulnerabilities to Climate Change and Extreme Weather. Washington DC: Government Printing Office.

⁶⁰ EPA Policy on Consultation and Coordination with Indian Tribes, at 1 (May 4, 2011), <https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>.

⁶¹ *Status of Tribal Air Report*, Nat'l Tribal Air Ass'n, at 19 (May 2019), <https://www7.nau.edu/itep/main/ntaa/ResourcesPDF/STAR19>.



The EPA proposes to rescind the previous determination that the midstream facilities – transmission and pipelines and corresponding pumps and storage – are part of the oil and natural gas source category. NTAA opposes this proposal. There is no substantive difference between a pipeline that gathers oil and gas in a well site and transports that oil and gas to a storage tank at or near the well site and a pipeline that transports treated oil and gas to another storage tank or directly to a customer. Other than distance (which creates its own unique set of risks), this activity is functionally equivalent. With tens of thousands, if not hundreds of thousands, of miles of pipelines crossing the country, to exclude this infrastructure is unreasonable.

Untreated oil (crude oil) and gas can be transported from the well sites to processing and treatment facilities far from those well sites. The oil and gas industry has changed its practices considerably from 1979 when the source category was originally established. It is not unreasonable for EPA to acknowledge these changes and to rationally and reasonably update the definition of the source category to reflect industry practices. The 2012 change was reasonable because it extended the source category to substantially similar, if not exactly the same, types of infrastructure. To revert to the original 1979 scope would itself be unreasonable.

EPA's proposed view that it can only expand the source category if it conducts a separate determination for the midstream infrastructure only impermissibly delays regulating those aspects of the oil and gas industry that also undeniably contribute to methane gas emissions. The EPA properly exercised its discretion and authority to expand the definition of the source category, and further imposition of a separate determination is unnecessary.

B. NTAA Opposes the Proposal to Revoke the NSPS for Methane Emissions from the Oil and Gas Sector

The key amendment proposed by the EPA is to rescind all NSPS for methane emissions from new, reconstructed, and major modified sources in the narrower, remaining oil and gas sector. The primary rationale given by EPA is that the technology used to capture VOC is the same technology used to capture methane.⁶² Since the oil and gas operators have to comply with the VOC standards, according to the EPA, the additional NSPS requirements for methane would thus be “entirely redundant,” and provide no additional health protections.⁶³

First, removing methane requirements based on the assertion they are redundant with VOC requirements is unlawful under Section 111 of the CAA.⁶⁴ Section 111 requires EPA to establish NSPS to control emissions from new and modified stationary sources within that category; it does not authorize EPA to rescind one pollutant's standards because another pollutant's standards may capture them.⁶⁵ Further, the standards are not redundant because, as explained below, there are no

⁶² 84 Fed. Reg. at 50259.

⁶³ *Id.*

⁶⁴ *See* 42 U.S.C. § 7411.

⁶⁵ *Id.*



VOC requirements under Section 111(d) for existing sources,⁶⁶ so the Proposed Rule would create a regulatory hole. Finally, technology changes and what might be used today to comply with the VOC standards may not be the same in the future. Even if the technology to capture the two types of emissions remains the same, there is no additional burden to comply with the methane emission standards (the purported “redundancy” is non-existent).

The EPA admits that if it does not have a new source standard for methane it will not have to develop an existing source standard and that existing sources will not be covered by VOC standards.⁶⁷ EPA claims that this lack of regulation will not result in a “substantial amount” of lost emission reductions because 1) EPA expects many existing sources will retire or undertake modifications and become subject to the VOC NSPS, 2) existing sources have market incentives to capture and sell methane, 3) voluntary programs to reduce methane emissions exist, and 4) many states have adopted requirements to capture methane.⁶⁸

This, too, is unacceptable. There are over 3465 existing oil and gas wells and over 16,000 miles of oil and gas pipelines on Indian lands.⁶⁹ These oil and gas facilities should have methane standards applicable to their operations to protect the health and welfare of Tribal communities. NTAA views methane standards as a co-benefit rather than a redundancy to VOC standards. As a co-benefit, EPA is required to consider the costs and benefits that come from controlling methane as well as VOC emissions. EPA does not explain what it considers substantial and does not quantitatively analyze the impacts of its expectations. Nevertheless, its assertions do not justify the proposal.

The fact that sources might retire or modify cannot justify the lack of existing source regulation; this applies to many provisions within the CAA and this justification essentially writes out Congress’s direction to regulate existing sources under Section 111(d). Capturing methane does not always have economic value. In fact, it only has economic value if it can be captured and sold into the market in a cost-effective way, which EPA recognizes, but does not analyze.⁷⁰ While voluntary programs may exist, EPA cannot abdicate its congressionally mandated responsibility based on hope that sources will enter into them and abide by them. The Proposed Rule does not

⁶⁶ *Id.* § 7411(d).

⁶⁷ 84 Fed. Reg. at 50271.

⁶⁸ *Id.* at 50271, 50273-77.

⁶⁹ U.S. Department of Energy Office of Indian Energy (September 2015). Tribal Energy System Vulnerabilities to Climate Change and Extreme Weather. Washington DC: Government Printing Office.

⁷⁰ 84 Fed. Reg. at 50274. When discussing the unsupported claim that market incentives will protect against emissions from existing sources, the Proposed Rule presents a figure that charts “% of Gross Natural Gas Withdrawals Vented or Flared” and “Natural Gas Gross Withdrawals (Trillion Cubic Feet)” since 1936. 84 Fed. Reg. at 50275. The Proposed Rule asserts the figure shows losing natural gas to venting and flaring has been reduced greatly over this period of time. *Id.* First, the Proposed Rule recognizes this figure is based on voluntary and inconsistently reported data. Second, this figure does not address the significant methane emissions occurring from leaks. Third, the figure charts one line as a percentage and the other line as a gross amount, which can mislead the reader about the amount of continued harmful methane emissions. *Id.* It is also unclear what this 80-plus year figure has to do with incentives moving forward to capture the significant methane emissions from existing sources that are occurring today.



even suggest that all existing sources will enter into voluntary programs to reduce methane emissions, or that the methane emissions achieved through these programs would be equal to the required regulation under Section 111(d).⁷¹ Finally, EPA does not analyze whether and to what extent Tribes have requirements to capture methane, and the current Administration has removed federal requirements that could have helped do so on Tribal lands.⁷² Nor does EPA analyze the impacts of the state regulations it mentions, which the states can revoke at any time.

EPA also fails to support any of these justifications. Instead, for example, the Proposed Rule states, “The EPA is in the process of examining the rate of turnover of existing facilities, including the rate at which existing facilities are replaced with new facilities, are modified, or shut down.”⁷³ This is insufficient. Before EPA proposed a change that relies on the rate of turnover to justify the change, EPA should have completed its analysis and provided the analysis to the public to consider and comment on. EPA cannot finalize the Proposed Rule without issuing a supplemental proposal that provides the public with notice of the analyses and reasoning behind the change.

Because the circumstances cited by the EPA can change at any time in the future, and because existing oil and gas facilities should be regulated, the EPA should retain its methane emission standards for new sources in the oil and gas sector.

IV. NTAA Opposes the Alternative Proposal

For the same reasons described above, NTAA opposes EPA’s alternative proposal to rescind the methane NSPS requirements applicable to the oil and natural gas source category, as it currently is constituted, which EPA justifies for the same reasons discussed above.⁷⁴

V. Conclusion

NTAA appreciates this opportunity to comment on the proposed rule and urges the agency to uphold the current requirements at 40 C.F.R. part 60, subpart OOOOa. The 2016 NSPS rule is complete and effective in requiring practices and technologies to reduce emissions from new sources and to protect the public health of Tribal communities. NTAA does not support the proposed changes, nor does NTAA support the proposed alternatives. If you have any questions or seek clarification from NTAA, please contact NTAA’s Project Director, Andy Bessler, at Andy.Bessler@nau.edu, or 928-523-0526.

On behalf of the NTAA’s Executive Committee,


Wilfred J. Nabahe

⁷¹ See *id.* at 50276-77.

⁷² Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 48184 (Sept. 28, 2018).

⁷³ 84 Fed. Reg. at 50273.

⁷⁴ *Id.* at 50246.



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