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January 31, 2022

Ms. Karen Marsh
Sector Policies and Programs Division (E143-05)
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, North Carolina 27711

National Tribal Air Association's Comments on the Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Docket Number EPA-HQ-OAR-2021-0317

Dear Ms. Marsh:

The National Tribal Air Association (NTAA) is pleased to submit this letter to provide comments on the Environmental Protection Agency's (EPA's) Proposed Standards of Performance for New, Reconstructed and Modified Sources and Emissions Guidelines for Existing Sources for the Oil and Natural Gas Sectors.

The NTAA is a member-based organization with 153 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 NTAA 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 communications between the federal government and Indian Tribes.

NTAA has some overarching comments and then will provide specific comments on each section of the proposal as appropriate. NTAA supports the White House Office of Domestic Climate Policy's Methane Emissions Reduction Action Plan, including the significant role of EPA in that Plan. NTAA agrees that significantly reducing methane in the oil and natural gas industry will generate significant climate benefits as well as direct health benefits to communities harmed by local and regional emissions. NTAA supports efforts from the EPA and other federal agencies to reduce emissions from the entire oil and natural gas industry, including extraction and production, processing, transmission, and distribution.

NTAA is supportive of EPA's proposed improvements over the 2012 and 2016 standards and the acknowledgement of technological advancements in the oil and natural gas industry sector over the past few years. NTAA appreciates EPA's explicit recognition that climate change and the oil and natural gas operations



disproportionately impact near source low wealth, minority communities, particularly Tribal communities. NTAA believes that the EPA's proposed controls are cost effective. NTAA encourages EPA to consider and compare the costs of the controls to the full range of negative costs experienced from the oil and natural gas industry's high methane, VOC, and hazardous air pollutants (HAP) emissions.

NTAA believes that for all equipment, the presumptive requirement should be zero emissions, and combustion should only be permitted with documentation that zero emissions is not feasible, with venting only allowed in documented emergencies.

NTAA supports requiring states to include community engagement for accepting program delegation for the new and modified sources, and as part of the program approval for State Plans for existing sources. However, we feel that it is equally, if not more important to include consultation and coordination with neighboring Tribal Governments. This will be particularly important in the checker boarded areas where jurisdiction between state, Tribe, and federal agencies can be convoluted and confusing. Requiring consultation and coordination between all government entities will provide more consistent understanding of the requirements, implementation, and enforcement across jurisdictions.

NTAA also believes that, as stated in the Agency's draft strategic plan, EPA should use its review authority under NEPA and Clean Air Act section 309 to actively review new oil and natural gas leasing particularly in Indian country. NTAA believes that EPA should use this authority to help coordinate and facilitate proper evaluation of new oil and natural gas production, particularly in Indian country. NTAA believes EPA should work with other federal agencies to fully evaluate the climate impacts of proposed oil and natural gas actions, including by considering the costs with the use of the social cost of methane.

NTAA understands that EPA typically delays promulgating a Federal Implementation Plan (FIP) until after a state fails to submit a plan. This has the potential of delaying implementation for a significant amount of time. However, NTAA believes that only a few Tribes will have the capacity to develop a Tribal Plan to address existing sources, so EPA will be responsible for developing a FIP in much of Indian country. By aggressively promulgating a FIP for Indian country, Tribal communities will see more expeditious emissions reductions. A FIP can expedite Tribal program implementation because the FIP can be delegated to interested Tribes or the Tribes can develop a Tribal Plan, that once approved can replace the Federal Plan. NTAA also believes that EPA should use all available resources to help Tribes address emissions from existing oil and natural gas sources in Indian country as soon as possible.

EPA's fact sheet for Tribal Nations states:

A detailed assessment of specific tribal nations' benefits of the proposed rule is not available. However, to provide information on the potential impacts of the oil and natural gas industry on communities with environmental justice concerns, including many tribal nations, EPA conducted "baseline" analyses to determine if certain environmental justice concerns existed.



NTAA supports EPA's efforts at evaluating and achieving environmental justice (EJ). Not only is an EJ review required, but it is also a part of good government. Studies have shown that residents of EJ communities are more vulnerable to the impacts of pollution due to pre-existing health conditions that often are higher in these communities due to lack of access to adequate nutrition and health care. Doing the work of reaching out to these communities and taking a hard look at how environmental policies will impact their health is a much smarter approach than trying to address adverse health outcomes later on, along with the distrust that will have built up in the community as they have watched their health decline even further.

However, while EJ concerns may apply to many Tribal communities, there also needs to be recognition that Tribes are very distinct entities that preexist establishment of the United States. They possess authority that predates the U.S. Constitution regarding the governance of their own internal affairs. For these reasons, EJ is an important issue, but must never usurp Tribal sovereignty and self-determination. Further, EJ must never replace government-to-government consultation directly with Tribes. Any EJ actions must treat Tribes as sovereign nations with self-determination first and part of the EJ community second. EPA's baseline assessment to determine if EJ concerns exist is not sufficient analysis with respect to considering and addressing Tribal impacts.

Also, in the section of the proposed rule where EPA discusses Executive Order (EO) 13175, EPA states that this rule does not have Tribal implications. However, EPA is only viewing the impacts of the Tribes with a lens of the EO alone. But the Agency's Indian policy and Treaty Rights policy require EPA to recognize Tribal rights, issues, and impacts beyond the executive order.¹ The oil and natural gas sector impacts Tribes not only at the production site but also in the transmission process. These impacts include direct impacts to Tribal health and culture and impacts through climate change. Thus, it is important not to understate the impacts and implications of oil and natural gas development, and the proposed rule, for Tribes.

Many of the proposed rule's requirements have exceptions for Alaska. Although we recognize that the winter conditions in Alaska provide additional challenges, NTAA is concerned that Alaska Native Villagers are not being protected equally or sufficiently. We encourage EPA to explore or research options that can be used in cold conditions that could provide more consistent protections for the fragile ecosystems and public health in Alaska.

¹ Moreover, the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by the United States in 2011, requires: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Annex, art. 32(2), U.N. Doc. A/RES/61/295 (Sept. 13, 2007); Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples, U.S. Dep't of State, <https://2009-2017.state.gov/documents/organization/154782.pdf>.



As a general principle, NTAA believes that the frequency between monitoring should be as short as possible to prevent uncontrolled emissions from leaks and to address malfunctions as quickly as possible. We also believe that the use of Optical Gas Imaging (OGI) technologies should be emphasized over EPA Method 21 for monitoring and that Method 21 should not be used for follow-up surveys after emissions were detected. We believe OGI is more efficient and effective at identifying leaks and fugitive emissions.

Section Specific Comments:

Finding and Repairing Leaks from Well Sites and Compressor Stations

NTAA supports the proposed rule's increased frequency of fugitive emissions monitoring for new and existing sources. We believe that the shortest duration of time between monitoring should be used in the final rule. Because many large emission events occur because of leaking equipment, longer monitoring periods would allow leaks to continue to emit unchecked for longer periods of time.

NTAA supports the use of advanced technologies, but for them to be used as a complement to the required monitoring until the technologies are more proven. Once the advanced technologies are proven, the owner/operator can submit them for approval as an equivalent alternative method. We feel this is important to protect fence line communities from the hazardous air pollutants associated with oil and natural gas emissions.

NTAA believes well sites with estimated emissions of less than 3 tons per year should be required to conduct quarterly or at least regular monitoring for leaks, particularly where leak-prone equipment is present on the site. Again, leaks and malfunctions are the largest source of emissions. Just because a well site has lower estimated emissions, does not mean that the equipment will not malfunction or fail resulting in significant emissions. These leaks and malfunctions must be identified and addressed as soon as possible to avoid emission of VOC, methane, and HAPs. A single inspection after the rule is finalized will not address this problem.

NTAA supports quarterly monitoring vs semi-annual monitoring for well sites between 3 and 8 tons per year.

NTAA believes that EPA should remove the exemption for "wellhead only well sites" from the fugitive emissions monitoring requirements. Even if these sites do not contain "major production and processing equipment," they can contain smaller equipment that can leak or malfunction. These sites are still capable of releasing, and still do release, fugitive emissions. Alternatively, EPA should narrow the definition of "wellhead only well sites" subject to this exemption so that sites that contain equipment with the potential to release fugitive emissions of methane and VOC are subject to the monitoring requirements. Given that wellhead only well sites are connected to gathering facilities where fugitive emissions monitoring is required, NTAA does not believe requiring monitoring at these sites is infeasible or particularly costly. In a supplement, EPA should also propose monitoring at abandoned wellhead only well sites, which also release emissions.



Upon detecting emissions, in addition to corrective action as soon as practicable, NTAA supports the requirement of a root cause analysis to determine why the emissions are present and prevent reoccurrences of the emissions.

Transition to Zero Emitting Technologies for Pneumatic Controllers

NTAA supports the requirement for new sources to use zero emitting technologies. NTAA also supports EPA's proposal to remove the exemption for higher bleed pneumatic controllers based on functional needs, except in very limited circumstances, and believes that exemption should also be removed with respect to pneumatic controllers in Alaska.

NTAA also supports EPA's proposal to apply presumptive emissions limitation standards for existing pneumatic controllers that are the same as those required for new sources.

Eliminating Venting of Associated Gas from Oil Wells

NTAA support the proposed rule's requirement for new oil wells with associated gas to capture gas for sale or use on site, or route to a flare. NTAA believes productive use should be the preference and routing for combustion, which is wasteful and still emits harmful pollutants even when burned completely, should only be allowed if productive use is technically infeasible. We also support the requirements for record keeping ensuring that flares are operated correctly. NTAA believes that EPA should consider standards requiring greater than 95 percent emissions reduction when associated gas cannot be put to productive use.

Strengthening Requirements for Storage Tanks

NTAA supports the proposals for new or modified storage tanks to include all storage batteries as well as requiring 95 percent control requirement and the strengthening of compliance requirements and monitoring for tank hatches or openings. NTAA believes EPA should apply the requirements to storage tanks with potential to emit of 4 tons per year or more of VOC rather than 6 tons per year for new sources and a lower threshold such as 12 tons per year of methane rather than 20 tons per year for existing sources. With respect to all control requirements, NTAA believes EPA should consider requiring higher control than 95 percent reduction in emissions where it is feasible.

Broadening the Types of Pneumatic Pumps covered by the Rule

NTAA supports the proposal for extending requirements to include all pneumatic pumps in the production site and diaphragm pumps in the transmissions segment to route emissions through a control device.

NTAA also supports the proposal to include the same controls for existing sources.

NTAA supports the proposed requirement that new and existing pneumatic pumps with access to power to install zero emitting technology.



Reducing Methane and VOC Emissions Through New and Stronger Requirements

NTAA supports the requirement to:

- Minimize emissions from liquids unloading and in particular, option 1 defining every well that undergoes liquids unloading as an affected facility. NTAA also agrees that each liquid unloading event represents a modification and would therefore be subject to the requirements of OOOOb.
- Strengthen leak detection and repair requirements for new natural gas processing facilities and include those requirements as the presumptive standards for existing sources.
- Strengthen the standards for methane emissions for new reciprocating compressors and include those requirements as the presumptive standards for existing sources.
- Reduce emissions from wet seal degassing systems by 95 percent for existing sources, consistent with the NSPS.

Recordkeeping and Reporting

NTAA supports the use of electronic reporting of performance test reports, annual reports, and semiannual reports and requests that EPA make sure this information, along with other relevant information, is organized and easily accessible to the public. NTAA believes that information on large emissions events should be made public sooner than the annual reporting period.

Additional Information for a Supplemental Proposal

NTAA will be interested to see the supplemental proposal. There are a significant number of abandoned wells throughout Indian country, many of which are not plugged and emitting harmful pollutants. There are also a significant number of oil and natural gas pipelines traversing Indian country and that undergo pigging and blowdown activities. Until EPA proposes and finalizes the supplemental proposal, these emission sources will remain largely uncontrolled. NTAA is concerned about the unknown emissions coming from these sources.

NTAA supports the proper closure of abandoned oil and natural gas wells and restoration of the well site. NTAA also supports periodic inspection and monitoring of abandoned wells capable of emitting. NTAA supports requirements for owners/operators to submit a closure plan describing how the well would be closed and financial assurance or bonding to assure compliance with closure requirements.

NTAA requests that EPA work with Indian Tribes, the Department of Interior and other federal agencies to expeditiously address orphaned and abandoned wells within Indian country. With proper funding and support, Tribes can partner with EPA and other agencies to reclaim abandoned wells within Indian Country. EPA should explore funding options from potential funding streams from infrastructure funding, including a partial set-aside for Tribes from the \$150 million in the Infrastructure Investment and Jobs Act set aside for plugging and remediating orphan wells on Tribal lands. EPA's response to this request can be provided within the supplemental proposal.

NTAA also supports regulation of emissions from pigging operations and related blowdown activities. NTAA understands that technologies are available, feasible, and cost effective to prevent harmful emissions of methane, VOCs, and HAPs during these operations. NTAA supports a combination of the strategies identified as potential control options.

NTAA believes that EPA should require tank truck loading to, at a minimum, use bottom filling or a submerged fill pipe to reduce emissions.

We are aware of information that the Western Regional Air Partnership has developed that may support EPA's regulation of these activities.² In addition, we are aware of the activities in states such as Pennsylvania and Ohio to identify and address abandoned and orphaned wells.³

NTAA believes that empowering communities impacted by oil and natural gas development is important. We recognize that there are opportunities to provide communities with resources, training, and support to use sensor technology, and monitors to use as a screening tool for potential leaks or malfunctions. For example, the supplemental proposal could require sources to provide resources to locate passive benzene (similar to those used around petroleum refineries) monitors in neighboring communities. These monitors can indicate the presence of emissions and OGI monitoring then can be used to identify leaks and institute repairs. Community organizations can collect and replace monitors, and ship to the lab for processing. The community can then notify the implementing authority and the source that emissions are present. By allowing the community to be involved there would be more trust in the data and confidence that issues are being identified and addressed.

We also believe that an anonymous emissions/malfunction hotline can be made available to workers and community members to report issues when they occur. NTAA believes EPA should require a root cause analysis and corrective actions when a community member or organization discovers and reports a large emission event. This should include, at a minimum, a response from the source's owner/operator documenting what investigation was performed, what was discovered, and what corrective actions were taken.

NTAA would also advocate for an interactive emissions mapping tool to for community members to understand the location and potential emissions from the oil and natural gas industry

² *Oil & Gas Work Group*, Western Regional Air Partnership, <https://www.wrapair2.org/OGWG.aspx>.

³ *Rewriting Pennsylvania's Legacy Plugging & Plugging Support Contractor Survey*, Penn. Dept. of Env'tl. Prot. (July, 2021), <https://www.dep.pa.gov/Business/Energy/OilandGasPrograms/OilandGasMgmt/LegacyWells/Pages/default.aspx>; *Kathiann M. Kowalski, Thousands of Abandoned Ohio Oil and Gas Wells May be Hidden. Drones Could Help Find Them*, *Energy News Network* (May 10, 2021), <https://energynews.us/2021/05/10/thousands-of-abandoned-ohio-oil-and-gas-wells-may-be-hidden-drones-could-help-discover-them/>.



subject to the rules, as well as the location for abandoned and orphaned wells. This interactive tool would need to be flexible enough for communities to add potential new leases and permits for new or modified sources so they can effectively engage in future activities. This tool should also include up-to-date information on the sources' owner/operator, so that the community members can quickly notify the facility of large emission events.

NTAA appreciates this opportunity to submit this pre-proposal comment and looks forward to further work with the EPA on this important issue.

If you have any questions or seek clarification from the NTAA, please do not hesitate to contact the NTAA's Project Director Andy Bessler at 928-523-0526 or Andy.Bessler@nau.edu.

On Behalf of the NTAA Executive Committee,

A handwritten signature in black ink, appearing to read 'Brandy Toft', is written over a faint, light-colored signature line.

Brandy Toft
Interim Chairperson
National Tribal Air Association's
Executive Committee

Cc: Pat Childers, EPA OAR