

November 1, 2018

**RE: Docket ID No. EPA-HQ-OAR-2017-0483; Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration**

Dear Acting Administrator Wheeler,

The undersigned groups write to respectfully request an extension of the public comment period for the Environmental Protection Agency's ("EPA") rulemaking regarding *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration*, 83 Fed. Reg. 52,056 (Oct. 15, 2018) (the "NSPS Reconsideration Proposal" or "Proposal"). We request that EPA make publicly available all compliance data reported pursuant to the current standards, *Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed, and Modified Sources*, 81 Fed. Reg. 35,824 (June 3, 2016) (the "NSPS"), including operators' second annual compliance reports due by October 31, 2018, along with any analysis by EPA of this data. Consideration of this information is crucial to a reasoned analysis of the NSPS Reconsideration Proposal, including the success of the NSPS at reducing emissions and the cost-effectiveness of the standards EPA adopted in 2016, and to stakeholders' ability to comment meaningfully on the Proposal. We respectfully request that EPA extend the deadline for public comments on the NSPS Reconsideration Proposal until 60 days after such compliance data and analysis is made public, in order to allow for meaningful public analysis and comment.

Under the Clean Air Act, a regulatory proposal must include a "statement of basis and purpose," including a summary of "the factual data on which the proposed rule is based" and "the methodology used in obtaining the data and in analyzing the data." 42 U.S.C. § 7607(d)(3). EPA must also make available for public comment in the docket for the proposed rule "[a]ll data, information, and documents ... on which the proposed rule relies." *Id.*; see also *Sierra Club v. Costle*, 657 F.2d 298, 398 (D.C. Cir. 1981) ("If, however, documents of central importance upon which EPA intended to rely had been entered on the docket too late for any meaningful public comment prior to promulgation, then both the structure and spirit of section 307 would have been violated."); *Conn. Light & Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530-31 (D.C. Cir. 1981) ("An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.").

The NSPS for emissions of air pollutants from new and modified sources in the oil and gas sector was finalized in June 2016 and has been delivering critical climate and public health benefits for over two years. 81 Fed. Reg. 35,824 (June 3, 2016). Owners and operators have been required to conduct leak detection and repair surveys since June 2017. *Id.* During that time, operators have been required to submit reports of compliance to EPA. These reports include:

- Results of the performance test, as required by 40 C.F.R. § 60.5420a(b)(9)(i);
- Initial semiannual reports, as required by 40 C.F.R. § 60.5422a(b);
- Semiannual reports, as required by 40 C.F.R. § 60.5422a(a);
- Annual reports, as required by 40 C.F.R. § 60.5420a(b); and
- Annual reports of excess emissions for sweetening units, as required by 40 C.F.R. § 60.5423a(b).

Importantly, operators' second annual reports were due to the agency by October 31, 2018. These reports contain detailed compliance information. For example, with respect to fugitive emissions, owners/operators must report:

the date and time of the surveys completed during the reporting year, the name of the operator performing the survey; the ambient temperature, sky conditions, and maximum wind during the survey; the type of monitoring instrument used; the number and type of components that were found to have fugitive emissions; the number and type of components that were not repaired during the monitoring survey; the number and type of difficult-to-monitor and unsafe-to-monitor components that were monitored; the date of the successful repair of the fugitive emissions component if it was not repaired during the survey; the number and type of fugitive emission components that were placed on delay of repair and the explanation of why the component could not be repaired and was placed on delay of repair; and the type of monitoring instrument used to resurvey a repaired component that could not be repaired during the initial monitoring survey...

81 Fed. Reg. at 35,846. Compliance reports—which include all of this information from each affected source and which were in EPA's possession at the time it issued the NSPS Reconsideration Proposal or came into EPA's possession shortly thereafter—contain information critical to assessing the feasibility and cost-effectiveness of the NSPS and any purported need to relax the standards. For example, EPA indicates in the NSPS Reconsideration Proposal that although its modeling indicates that semiannual fugitive emissions monitoring at non-marginal well sites is cost-effective, EPA is “unable to conclude that semiannual monitoring is cost effective” based upon purportedly inadequate data. 83 Fed. Reg. at 52,065.<sup>1</sup> EPA, however, does not appear to have evaluated information in the compliance reports, including data on average survey times, that suggests fugitive monitoring costs are *lower* than estimated in the analysis for the NSPS. Data on average survey time would directly inform the cost-effectiveness of the NSPS.

Specifically, in the NSPS, EPA assumed that that the annual labor requirements for semiannual inspection and repair of leaks at well sites would be 14 hours per site—or an average of 3.5 hours per well per survey, based on EPA's assumption of two wells per site.<sup>2</sup> However, initial analysis of the limited number of compliance reports that are publicly available suggests that the average survey time was significantly lower than estimated by EPA—approximately 1.9 hours per well, including travel time between sites. As a result, EPA likely overestimated the costs associated with leak detection and repair, and therefore *underestimated* the cost-effectiveness of a semiannual inspection program.

Moreover, EPA has proposed to dramatically weaken the frequency of leak detection and repair at wells that produce less than 15 barrels of oil equivalent per day based on information associated with 27 low producing well sites in a dataset from the Dallas-Fort Worth area. 83 Fed.

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<sup>1</sup> Indeed, in the NSPS Reconsideration Proposal, EPA “[s]pecifically ... requests information that has been collected from implementing fugitive monitoring programs” with respect to compressor stations, 83 Fed. Reg. at 52,066, without acknowledging that compliance reports in EPA's possession contain such information.

<sup>2</sup> EPA, *Regulatory Impact Analysis of the Final Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources* 6-34, Table 6-14 (May 2016).

Reg. at 52,068. EPA is also “soliciting data [from operators] on the number of major production and processing equipment (*e.g.*, separators, heater treaters, glycol dehydrators, and storage vessels) and the number of fugitive emissions components (*e.g.*, valves, open-ended lines, and connectors) located at [low production] well sites.” 83 Fed. Reg. at 52,069. Yet EPA’s own compliance reports contain information on exponentially greater numbers of low producing sites, and would allow for an assessment of the complexity of the sites and their associated emissions.

Instead of analyzing the factual data that regulated entities submitted in their compliance reports, making it public so that stakeholders can analyze it, and placing it in the docket for the NSPS Reconsideration, EPA has apparently decided instead to ignore that data in updating its analysis.<sup>3</sup> Indeed, EPA did not mention that a mere two weeks after its Proposal it would be receiving the second round of annual reports, much less await that relevant data in order to inform its Proposal. It would be arbitrary and capricious not to take this available data into account in promulgating a final rule, and a failure to make this information fully available for public comment renders it impossible for interested parties to provide meaningful comments.

Moreover, the compliance reports collect “emission data” within the meaning of section 114 of the Clean Air Act, and so EPA is required by the statute to make this information public. Consistent with this statutory duty, the NSPS regulations state that reporting parties “must submit reports to the EPA via the [Compliance and Emissions Data Reporting Interface (“CEDRI”).” 40 C.F.R. § 60.5422a(b)(11); *see also id.* § 60.5422a(a). The NSPS rule stated that reports submitted pursuant to the regulations would be made electronically available on EPA’s WebFIRE website, that this website would be “easily accessible to everyone” and “provide a user-friendly interface that any stakeholder can access,” and that “[b]y making the records, data and reports addressed in [the NSPS] readily available, the EPA, the regulated community and the public will benefit when the EPA conducts its CAA-required reviews.” 81 Fed. Reg. 35,824, 35,870. Additionally, the CEDRI website states: “**Important note:** CEDRI **does not** support collection of *confidential business information (CBI)* within any of the reports that are submitted in CEDRI by industry.” EPA, *Compliance and Emissions Data Reporting Interface (CEDRI)*.<sup>4</sup> EPA’s designation of CEDRI as the proper platform for reporting compliance, along with its comments in the NSPS, suggest that it contemplated compliance data collected in the reports would not contain confidential business information and all compliance data would ultimately be made public, consistent with Clean Air Act requirements.

On November 1, 2017, the Environmental Defense Fund (“EDF”) submitted a request under the Freedom of Information Act (“FOIA”), U.S.C. § 552, for all records received by EPA related to reporting made pursuant to the NSPS, 40 C.F.R. Part 60 Subpart OOOOa. While EPA has released some reports to EDF pursuant to that request, and has made some reports submitted via CEDRI available through EPA’s public WebFIRE database, the agency has not yet made publicly available all of the compliance reports that have been submitted, despite its clear obligation under the Clean Air Act to do so. EPA has indicated it is withholding roughly half of the first annual compliance reports it possesses from public disclosure due to their supposed inclusion of CBI. *See* Email from Peter Bermes, Attorney-Advisor, EPA, to Samantha Caravello,

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<sup>3</sup> An initial review of the 82 supporting documents EPA placed in the docket after it published the Proposal suggest that none of these items analyze, rely upon, or even reference the compliance reports that EPA has received.

<sup>4</sup> <https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>.

EDF (April 27, 2018). Furthermore, the reports received appear to represent an even smaller fraction of the wells subject to the standards, based on a review of the number of wells subject to the NSPS in the Drillinginfo database.

An initial analysis of the limited number of first annual compliance reports that are available on EPA's WebFIRE database demonstrates that the reports offer key data that is directly relevant to the NSPS Reconsideration Proposal rulemaking. The reports include data on the number of components found leaking at each well site during an inspection, the types of components found most frequently with leaks, the time for a surveyor to conduct an inspection, and the percent of leaking components repaired. The second annual reports will provide an abundance of additional significant data. These data are needed to evaluate the success of the NSPS at reducing emissions at a semiannual monitoring frequency and to evaluate the success of the 30-day leak repair period currently found in the NSPS. The data also provide vital insight into compliance costs for the NSPS, and on whether EPA overestimated costs to operators in the NSPS rulemaking and NSPS Reconsideration Proposal.

We respectfully urge EPA to make public in the docket *all* compliance reports submitted pursuant to 40 C.F.R. Part 60 Subpart OOOOa, including reports due by October 31, 2018, along with any analysis of compliance data undertaken by EPA. We request that EPA extend the comment period for 60 days after these reports have been made public, to allow for meaningful analysis and comment on the NSPS Reconsideration Proposal.

Respectfully submitted,

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