



ENVIRONMENTAL DEFENSE FUND
STATEMENT ON
U.S. ENVIRONMENTAL PROTECTION AGENCY

“PROPOSED RULE – OIL AND NATURAL GAS SECTOR: EMISSION
STANDARDS FOR NEW, RECONSTRUCTED, AND MODIFIED SOURCES:
STAY OF CERTAIN REQUIREMENTS”

EPA-HQ-OAR-2010-0505
&
EPA-HQ-OAR-2017-0346

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My name is Benjamin Levitan, and I am an attorney at Environmental Defense Fund. On behalf of EDF and our more than 2 million members nationwide, thank you for the opportunity to testify today.

EDF has long worked to better characterize methane pollution from the oil and natural gas sector, including partnering with academic institutions and companies to undertake a series of studies to deepen our understanding of these harmful emissions. And we have worked both at the state and federal levels to ensure commonsense and highly cost-effective best practices are deployed to reduce this pollution.

This work has underscored the urgency of reducing methane emissions from the oil and gas sector and the critical importance of nationally uniform standards to achieve these reductions. In 2016, EPA adopted protections to reduce pollution from new and existing sources in the oil and gas sector, and we strongly oppose the Administrator's proposals to stay key aspects of these provisions for three months and for two years. The proposed stays are unauthorized by law, will harm public health in ways that EPA arbitrarily failed to consider, and are unwarranted.

EPA's Stays Are Unauthorized. The Clean Air Act makes clear that once properly promulgated, agency actions shall go into effect. On July 3, the United States Court of Appeals for the D.C. Circuit vacated EPA's prior 90-day suspension of clean air protections, on the grounds that EPA's suspension was "unauthorized," "unreasonable," and "arbitrary, capricious, [and] in excess of statutory ... authority."¹ As the Court made clear, it is "axiomatic" that "administrative agencies may act only pursuant to authority delegated to them by Congress," and actions to suspend existing protections are no exception.²

EPA cites no legal authority to support its proposed suspensions and there is none. The D.C. Circuit Court found that Section 307(d)(7)(B) of the Clean Air Act did not authorize EPA's initial 90-day stay, and the provision certainly does not support EPA's proposed extensions.³ Nor does Section 705 of the Administrative Procedure Act authorize EPA's proposed stays of the already effective 2016 Rule.⁴

EPA cannot remedy its unauthorized stays by holding a notice and comment period. Applicable notice and comment requirements do not expand EPA's authority—the agency must always have statutory authority for its actions, including suspensions of duly enacted environmental protections, and there is simply no legal basis for the proposed stays.

¹ *Clean Air Council v. Pruitt*, No. 17-1145, 2017 U.S. App. LEXIS 11803, at *12–13 (D.C. Cir. July 3, 2017) (per curiam).

² *Id.* at *12 (quoting *Verizon v. FCC*, 740 F.3d 623, 632 (D.C. Cir. 2014)).

³ *Id.* at *27–28.

⁴ 5 U.S.C. § 705 (2012).

EPA’s Proposed Stays Are Arbitrary and Will Result in Imminent and Irreparable Harms to the Public.

EPA has also arbitrarily and unlawfully failed to consider the impacts its proposed stays will have on public health. In the proposed rule to suspend the standards, EPA has prominently assessed benefits to industry that may result from suspending these protections. The agency did not, however, consider how the stays would harm public health,⁵ despite acknowledging that the stays will result in “foregone benefits” and may disproportionately harm children’s health.⁶ This one-sided analysis is manifestly arbitrary and deeply troubling given the significant, imminent, and irreparable harms that will result from EPA’s proposed stay.

The protection that EPA is proposing to stay affects more than 11,000 wells in states without their own state-level leak detection programs, as well as new and modified compressor stations.⁷ EPA’s proposal would allow pollution from these sources to persist for at least an additional two years. This pollution includes substantial amounts of climate-destabilizing methane emissions, smog-forming and health harming volatile organic compounds, and toxic air pollution like benzene, a known human carcinogen. Sources that will be drilled during the course of the stays, and that would otherwise be covered by the standards, will add significant additional pollution. Indeed, EPA estimates that 22,421 new oil wells and 18,340 new natural gas wells will be drilled in 2018 alone.⁸

EPA’s Proposed Stays are Unwarranted. Finally, EPA’s proposed stays are unwarranted. The commonsense protections at issue are modeled on successful state standards in Colorado, Wyoming, Ohio, and other states. These state standards have demonstrated that EPA’s performance standards can protect public health, reduce wasted product, and create high-quality jobs for American workers.

Moreover, the protections are highly cost-effective. A report by ICF International found that a 40 percent reduction in wasted gas can be achieved for one penny per thousand cubic feet produced.⁹ And the costs of these commonsense technologies represent just a tiny fraction of industry revenues.

Accordingly, we respectfully urge you to withdraw EPA’s deeply flawed proposal to suspend critical clean air protections for new and existing sources in the oil and natural gas sector. Thank you for the opportunity to testify at today’s hearing and for considering our comments.

⁵ See, e.g., 82 Fed. Reg. 27,645, 27,648 (June 6, 2017) (“Although there would be foregone benefits as a result of this delay, a quantitative estimate of this effect is not currently available, and therefore the associated foregone benefits are not presented.”).

⁶ 82 Fed. Reg. at 27,650.

⁷ *Clean Air Council v. Pruitt*, No. 17-1145, Pet’r’s Br. Attach. 5, Decl. of Dr. David Lyon ¶ 15 (filed June 5, 2017).

⁸ EPA, *Regulatory Impact Analysis of the Final Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources* at 2-28 (EPA-452/R-16-002, May 2016).

⁹ ICF International, *Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries* (Mar. 2014), available at <https://www.edf.org/energy/icf-methane-cost-curve-report>.

Sincerely,

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