

THE NAVAJO NATION



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

The Navajo Nation submits 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).¹

The Navajo Nation is a federally recognized tribe located in the Four Corners region and spans more than 27,000 square miles, which is slightly larger than the state of West Virginia. The Navajo Nation has more than 300,000 enrolled members, with over 180,000 of those members living on the Navajo Nation. Oil and gas development on the Navajo Nation has provided income for the Navajo Nation government and jobs for the community. Oil and natural gas are extracted from and transported through the Navajo Nation every day. During oil and natural gas extraction, processing, transportation, and storage, significant volumes of methane (and other pollutants) are released into the atmosphere, harming public health and the environment, as well as causing the loss of royalty payments to the Navajo Nation. Because of the extensive oil and natural gas development and transportation in the area, a large methane hotspot over the Four Corners region can consistently be viewed from space satellite images. The Navajo Nation honors its sacred obligation and duty to respect, preserve, and protect its resources, sacred places, the environment, and human health. The Navajo Nation is therefore keenly interested in federal environmental regulations affecting Navajo lands, such as the New Source Performance Standards for the Oil and Natural Gas sector.

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. EPA's proposed changes will also adversely impact the control of volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). The Navajo Nation has several concerns regarding the agency's proposed changes, which

¹ Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 84 Fed. Reg. 50,244 (Sept. 24, 2019).

would negatively impact air quality and public health in the Navajo Nation. The Proposed Rule, without support in the record, contradicts previous thorough EPA analyses and practices that were based on the best available and peer-reviewed science. By excluding the majority of the oil and gas infrastructure—transmission (pipelines) and storage facilities, which are located throughout the Navajo Nation—the proposal, even by EPA’s estimates, will result in increased harmful methane, VOC, and HAP emissions.² The Proposed Rule’s analysis of these impacts is insufficient, particularly with respect to the impacts on the Navajo Nation. Additionally, EPA intends to use the Proposed Rule as an excuse not to address methane emissions from existing sources, as the agency otherwise would be legally obligated to do. The Proposed Rule’s lack of analysis on this result is also problematic.

The Navajo Nation opposes both alternative regulatory rollbacks proposed by the EPA. Instead, EPA should maintain the 2016 New Source Performance Standards, including for the transmission and storage segment, and prescribe regulations for the control of methane emissions from existing sources as Section 111(d) of the Clean Air Act requires. The Navajo Nation requests a formal government-to-government consultation to discuss the proposal and the harmful impacts it would cause.

I. Background

The Intergovernmental Panel on Climate Change has explained:

Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, sea level has risen, and the concentrations of greenhouse gases have increased.³

Recently, the Fourth National Climate Assessment documented that: “Climate change increasingly threatens Indigenous communities’ livelihoods, economies, health, and cultural identities by disrupting interconnected social, physical, and ecological systems.”⁴ This statement is particularly true for the Navajo Nation; the 2013 Assessment of Climate Change in the Southwestern United States documented trends of increasing temperatures, decreasing snowfall, declining streamflow,

² *Id.* at 50,278.

³ Intergovernmental Panel on Climate Change, *Climate Change 2014 Synthesis Report Summary for Policymakers*, at 2 (2015), available at https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf.

⁴ 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.

and water availability on the Navajo Nation,⁵ and indeed, the Navajo Nation has been in the middle of a severe drought.⁶

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.”⁷ 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.”⁸ Section 111 requires EPA to establish New Source Performance Standards (NSPS) to control emissions from new and modified sources within that category.⁹ 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.”¹⁰ 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 Section 111 since 1979.¹¹ In 1985, EPA promulgated NSPS for VOCs and sulfur dioxide emissions from natural gas processing plants.¹² In 2009, EPA concluded that by causing or contributing to climate change, greenhouse gases (such as methane) endanger both the public health and the public welfare of current and future generations.¹³ 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.¹⁴ Based on the fact that greenhouse gases endanger public health and welfare, EPA issued new NSPS in 2016 to reduce releases of

⁵ See National Climate Assessment Regional Technical Input Report Series, *Assessment of Climate Change in the Southwest United States: A Report Prepared for the National Climate Assessment*, at 389-92 (Garfin et al. eds. 2013), available at <http://www.swcarr.arizona.edu/sites/all/themes/files/SW-NCA-color-FINALweb.pdf>.

⁶ *Current Map*, United States Drought Monitor (Nov. 7, 2019), <https://droughtmonitor.unl.edu/>; Emily Moon, *Drought Intensifies the Navajo Nation’s Ongoing Water Shortage*, Pacific Standard (In Photos) (June 8, 2019), <https://psmag.com/news/drought-intensifies-the-navajo-nations-ongoing-water-shortage-in-photos>.

⁷ 42 U.S.C. § 7401(b).

⁸ *Id.* § 7411(b).

⁹ *Id.*

¹⁰ *Id.* § 7411(a)(1), (b)(1).

¹¹ Priority List and Additions to the List of Categories of Stationary Sources, 44 Fed. Reg. 49,222, 49,226 (Aug. 21, 1979).

¹² Standards of Performance for New Stationary Sources; Equipment Leaks of VOC From Onshore Natural Gas Processing Plants, 50 Fed. Reg. 26,122 (June 24, 1985), Standards of Performance for New Stationary Sources; Onshore Natural Gas Processing SO₂ Emissions, 50 Fed. Reg. 40,158 (Oct. 1, 1985).

¹³ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (December 15, 2009).

¹⁴ 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).

methane from the oil and natural gas sector.¹⁵ The 2016 NSPS set requirements for methane emissions, further regulated VOCs, and included additional sources not covered in the 2012 NSPS.¹⁶ It set cost-effective controls that reduce both methane and VOC emissions from equipment across the industry.¹⁷ These standards are important because the oil and natural gas sector emits large quantities of methane and volatile organic compounds: by EPA's own estimates, the oil and natural gas sector accounts for around 30% of U.S. methane emissions, while methane is 25 times more potent than CO₂ as a heat-trapping gas.¹⁸

On March 28, 2017, President Trump issued Executive Order 13,783, to promote energy independence and economic growth.¹⁹ Among other things, the Executive Order directed EPA to review and rescind regulations that unduly burden the development of domestic energy.²⁰ 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, and rescind the methane and VOC NSPS for the transmission and storage segment.²¹ 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, claiming that the methane NSPS are “wholly redundant” with the VOC NSPS and thus are unnecessary.²² 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).²³ 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, based on the same claims as the primary proposal: that the methane requirements are “entirely redundant” with the existing VOC NSPS.²⁴

¹⁵ Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35,824 (June 3, 2016).

¹⁶ *Id.* at 35,825.

¹⁷ *Id.* at 35,826-27.

¹⁸ 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 50,249.

¹⁹ Promoting Energy Independence and Economic Growth, Exec. Order 13,783 of March 28, 2017, 82 Fed. Reg. 16,093 (Mar. 31, 2017).

²⁰ *Id.* 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 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.

²¹ 84 Fed. Reg. at 50,256-59.

²² *Id.* at 50,259-30.

²³ *Id.* at 50,271.

²⁴ *Id.* at 50,260-61.

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

A. The Proposed Rule Will Result in Increased Emissions that Cause Climate Change and Disproportionately Harm the Navajo Nation

EPA has failed to analyze tribal impacts and properly consult with tribes from the outset of its decision-making that impacts tribes and the Navajo Nation. Courts have long recognized the federal trust responsibility,²⁵ as has EPA. In its Indian Policy, first issued in 1984²⁶ and reaffirmed ever since,²⁷ 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.”²⁸ Additionally, Executive Order 12,898, “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[.]”²⁹

EPA does not consider or analyze the harms the proposal will cause to the Navajo Nation or other tribal communities. Instead, EPA merely compares industry savings to a faulty dollar value of what it claims are the domestic climate harms that the Proposed Rule’s increased methane emissions will cause, and asserts that the proposal does not have tribal implications as specified in Executive Order 13,175.³⁰ The Proposed Rule further 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.”³¹ Apparently based on this “belief,” EPA did not analyze 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.”³²

²⁵ 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”).

²⁶ EPA Policy for the Administration of Environmental Programs on Indian Reservations (EPA Policy), William D. Ruckelshaus (Nov. 8, 1984), <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>.

²⁷ 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.

²⁸ EPA Policy, at 1.

²⁹ Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order 12,898 of Feb. 11, 1994, 59 Fed. Reg. 7,629 (Feb. 16, 1994).

³⁰ 84 Fed. Reg. at 50,282.

³¹ *Id.* at 50,283.

³² 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.”

EPA concedes that the proposal to rescind the standards applicable to the transmission and storage segment will cause greater methane emissions.³³ EPA also concedes that based on the proposal, the agency plans to leave methane from existing sources unregulated under CAA § 111(d).³⁴ This too will cause increased methane emissions. It is categorically false to claim (or “believe”) that the Proposed Rule, and its increased methane emissions, will not impact, disproportionately, or otherwise, tribal communities. 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 impacts experienced by tribes. And that is before considering the lost royalty payments to the Navajo Nation that the Proposed Rule would cause (but again does not consider). It would be arbitrary and capricious for EPA to finalize a proposal in which the agency decided not to analyze impacts to tribes based on a false claim of no disproportionate impacts. Further, EPA must undertake meaningful consultation with the Navajo Nation, which requires that EPA consider the impacts its regulatory proposals have on tribes and participate in a back and forth iterative discussion on those impacts (among other things).

Because of these deficiencies, the Navajo Nation requests that EPA withdraw the Proposed Rule. Should EPA decide to move forward with the Proposed Rule, notwithstanding its numerous other flaws, the Navajo Nation requests that EPA withdraw the proposal until the agency fulfills its obligations which, at a minimum, require an analysis of the impacts to Indian tribes and government-to-government consultation. The Navajo Nation formally requests direct consultation with EPA, and an extension or reopening of the public comment period in order to properly consider and discuss the Proposed Rule and its impacts, which EPA so far has ignored.

The Proposed Rule also ignores the data that show 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.³⁵ 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).”³⁶ Other studies have reached similar conclusions.³⁷ The Proposed Rule will therefore cause more methane emissions than EPA estimates, and will cause more

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>.

³³ 84 Fed. Reg. at 50,278.

³⁴ *Id.* at 50,272.

³⁵ 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>.

³⁶ *Id.*

³⁷ 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.

climate, human health, and air quality harms than EPA estimates and does not analyze. While EPA estimates the Proposed Rule would produce a net positive in value, based on reducing compliance costs for the industry by \$18 to 24 million a year,³⁸ which is a tiny percentage of the industry's overall revenue, it is arbitrary and capricious for EPA to move forward with the proposal based on a comparison of this number to the negative harms that EPA did not evaluate using the best available evidence.

What's more, 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."³⁹ This social cost of carbon was peer-reviewed and scientifically supported.⁴⁰ EPA now ignores the best available science, and instead estimates a smaller dollar value of "foregone domestic climate benefits," or climate-related harms it will cause domestically, based on an interim estimate of the domestic social cost of methane.⁴¹ EPA relies on this faulty, interim estimate to produce a positive net value from the Proposed Rule. Similar to other unlawful federal regulatory actions,⁴² 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.⁴³ But EPA should not 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 and should be withdrawn.

Finally, the Proposed Rule understates its negative impact by not accounting for the harms caused by methane from existing sources in the oil and natural gas industry that the Proposed Rule would exclude from regulation under Section 111(d).⁴⁴ EPA's refusal to consider these impacts is arbitrary and capricious.

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

EPA's Regulatory Impact Analysis (RIA) states that the proposed changes are expected to increase emissions by 370,000 tons of methane, 10,000 tons of VOCs, and 300 tons of HAPs over a six-year period relative to the current regulatory baseline from 2019 to 2025.⁴⁵ Beyond the negative climate impacts, EPA concedes that the additional HAPs and VOCs emitted along with methane

³⁸ 84 Fed. Reg. at 50,278.

³⁹ 81 Fed. Reg. at 35,836.

⁴⁰ *See id.* at 35,887-88.

⁴¹ *Id.*; 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 1-4, 3-8 to 3-9 (Aug. 2019).

⁴² Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49,184, 49,190 (Sept. 18, 2018).

⁴³ RIA, at 3-8 to 3-9.

⁴⁴ *See* Section III.B. *infra*; 84 Fed. Reg. at 50,271.

⁴⁵ 84 Fed. Reg. at 50,278. These numbers also are underestimates as they don't account for foregone emissions reductions from existing sources.

will degrade air quality and adversely affect health and welfare.⁴⁶ Again, the Proposed Rule should be withdrawn based on this fact alone; EPA's job is to protect the environment and public health, not harm it to save industry a small amount of money. The proposal is further problematic because it relies on an estimated net positive value from the proposed changes, but EPA does not include in that number an analysis of harms to human health. Despite recognizing that commonly used methodology exists to do so, EPA fails to provide estimates of costs related to the health impacts of increased emissions from the Proposed Rule.⁴⁷ Even short of monetizing the benefits, the Proposed Rule does not attempt to evaluate the negative health impacts in any manner or weigh them against the purported benefits, either for the U.S. in its entirety or for particularly susceptible tribal communities.

The Navajo Nation is concerned about methane, HAPs, and VOCs 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.⁴⁸ Similarly, VOCs contribute to smog formation, which can lead to childhood asthma attacks and even premature death. Methane and VOCs are precursors to ground-level ozone, which contribute to several harmful health and environmental impacts.⁴⁹

There are thousands of oil and gas wells and miles of pipelines located on and running through the Navajo Nation. Yet, tribal impacts were not considered in the Proposed Rule or regulatory impact analysis (thereby violating EPA's Policy on Consultation and Coordination with Indian Tribes⁵⁰). All tribes that have 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. And tribal communities are disproportionately susceptible to health effects of air pollution. Without an evaluation of the negative health impacts, both for the U.S. and tribal communities, the public cannot meaningfully comment on EPA's justifications for the proposal. The Navajo Nation requests EPA withdraw the Proposed Rule until EPA considers and explains the health impacts to the public and tribal communities from increased methane, VOCs, and HAPs, based on an accurate accounting of expected increases. The Navajo Nation also formally requests direct consultation with EPA, and an extension or reopening of the public comment period in order to properly consider and discuss the Proposed Rule and these impacts.

III. The Navajo Nation Opposes Both Aspects of the Primary Proposal

⁴⁶ *Id.* at 50,279.

⁴⁷ *Id.*; *see also* RIA, at 3-2.

⁴⁸ RIA at 3-19 to 3-27.

⁴⁹ *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>.

⁵⁰ 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>.

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

The EPA proposes to rescind its previous determination that midstream facilities—transmission and pipelines and corresponding pumps and storage—are part of the oil and natural gas source category. The Navajo Nation opposes this proposal.

There is no substantive difference between a pipeline that gathers natural gas from a well site and transports that natural gas to a storage tank at or near the well site and a pipeline that transports treated natural gas to another storage tank. Other than distance (which creates its own unique set of risks), this activity is functionally equivalent and uses the same equipment. EPA correctly explained that the equipment and operations at production, processing, transmission, and storage facilities are a sequence of functions that are interrelated and necessary for getting the product ready for distribution.⁵¹ EPA’s current proposal to treat like equipment differently would increase confusion and create conflicting regulations. With hundreds of thousands of miles of pipelines crossing the country, to exclude this infrastructure is unreasonable.

Untreated 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 was appropriate and well-supported for EPA to acknowledge these changes and to update the definition of the source category to reflect industry practices. The updated definition reasonably extended the source category to substantially similar, if not the same, types of infrastructure. To revert to the original 1979 scope now would be unreasonable.

EPA’s proposed view that it can only expand the source category if it conducts a separate determination for the midstream infrastructure also impermissibly delays regulating those aspects of the oil and gas industry that undeniably contribute to methane gas emissions. This is contrary to the CAA and its purpose. The EPA properly exercised its discretion and authority to expand the definition of the source category; requiring a separate determination to be made several years later is unnecessary.

B. The Navajo Nation 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 the NSPS for methane emissions in the narrower, remaining oil and gas sector. The rationale given by EPA is that the technology used to capture VOCs is the same technology used to capture methane.⁵² Since new and modified oil and natural gas sources have to comply with the VOC standards, according to the EPA, the NSPS requirements for methane are “entirely redundant,” and provide no additional health protections.⁵³

⁵¹ See 81 Fed. Reg. at 35,832.

⁵² 84 Fed. Reg. at 50,259.

⁵³ *Id.*

Removing methane requirements based on the assertion they are redundant with VOC requirements is unlawful under Section 111 of the CAA.⁵⁴ Section 111 requires EPA to establish NSPS to control emissions from new and modified stationary sources within that category; nothing in that Section authorizes EPA to rescind one pollutant's standards because another pollutant's standards may capture them.⁵⁵ If the standards were, and remain, truly redundant, then there is no additional burden to comply with the methane emission standards.

The Proposed Rule tries to point to an example of this being done in the past, but to do so, it misrepresents a 1977 proposal in which EPA established particulate matter (PM) standards but not SO₂ standards at lime plants.⁵⁶ The Proposed Rule claims that the 1977 proposal “explained that the particulate controls would have the effect of adequately controlling SO₂” and that “[i]n effect, the EPA recognized that SO₂ requirements would be redundant to PM requirements, and, *for that reason, declined to impose SO₂ requirements.*”⁵⁷ This is false. The reason EPA did not propose SO₂ requirements in 1977 was not because SO₂ was adequately controlled by the PM requirements or that SO₂ requirements were redundant with the PM requirements. The 1977 proposal explains: “Consideration of the potential environmental, economic and energy impacts, however, has convinced EPA to not propose an SO₂ standard which would force the use of venturi scrubbers.”⁵⁸

Further, the standards are not redundant because, as explained below, there are no VOC requirements under Section 111(d) for existing sources,⁵⁹ so the Proposed Rule would create a regulatory hole. EPA recognizes this gap, but does not address how it contradicts the claims of complete redundancy. Finally, technology changes and what might be used today to comply with the VOC standards may not be the same in the future. Because the standards are not “entirely redundant,” it is unlawful for EPA to rescind the methane standards based on a false reason.

The EPA admits that if it does not have a new source standard for methane it will not be required to develop an existing source standard and therefore existing sources will not be covered by VOC standards.⁶⁰ 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, alternatively, 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.⁶¹

⁵⁴ See 42 U.S.C. § 7411.

⁵⁵ *Id.*

⁵⁶ 84 Fed. Reg. at 50,259

⁵⁷ *Id.* (citing Standards of Performance for New Stationary Sources Lime Manufacturing Plants, 42 Fed. Reg. 22,506, 22,507 (May 3, 1977)) (emphasis added).

⁵⁸ 42 Fed. Reg. at 22,507.

⁵⁹ 42 U.S.C. § 7411(d).

⁶⁰ 84 Fed. Reg. at 50,271.

⁶¹ *Id.* at 50,271, 50,273-77.

First, EPA does not explain what it considers *substantial* and does not quantitatively analyze the impacts of its proposal. This failing prevents meaningful comment or consultation; EPA should withdraw the Proposal. In any event, EPA's assertions do not justify the proposal.

That sources might retire or undergo modifications does not justify the lack of existing source regulation; this possibility applies to many provisions within the CAA and relying on it as a justification to forgo regulation would write out Congress's direction to regulate existing sources under Section 111(d). Moreover, 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.⁶² 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 even suggest that all existing sources will enter into voluntary programs to reduce methane emissions, or that the methane emissions controlled through these programs would be equal to the required regulation under Section 111(d).⁶³ Finally, EPA does not analyze the impacts of the state regulations it mentions, which the states can revoke at any time. More fundamentally, 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.⁶⁴

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."⁶⁵ Nevertheless, EPA is basing its proposed regulatory change at least in part on an analysis that EPA "is in the process of" performing and that has not been made available to the public to review and comment on. EPA should have requested the necessary information and completed its analysis before publishing the Proposed Rule, which should have included the data and analysis so the public could understand and comment on EPA's bases for the changes. EPA must not finalize the Proposed Rule without issuing a supplemental proposal that provides the public with notice of this analysis, as well as any other bases EPA relies on for the change.

⁶² 84 Fed. Reg. at 50,274. 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 50,275. The Proposed Rule asserts the figure shows natural gas losses from venting and flaring has been reduced greatly over this 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.

⁶³ *See id.* at 50,276-77.

⁶⁴ Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 48,184 (Sept. 28, 2018).

⁶⁵ 84 Fed. Reg. at 50,273.

IV. The Navajo Nation Opposes the Alternative Proposal

For the same reasons described above, the Navajo Nation 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.⁶⁶

V. Conclusion

The Navajo Nation appreciates the opportunity to comment on EPA's Proposed Rule and urges the agency to uphold the current requirements. The 2016 NSPS rule is effective in requiring established practices and technologies to reduce emissions from new sources and to protect the public health. Based on the 2016 NSPS, EPA should adopt protective standards for existing sources in the oil and natural gas sector. At the very least, the Navajo Nation requests that EPA fulfill its basic obligations, which at a minimum require an analysis of the proposal's impacts to the United States and Indian tribes, an extension of the public comment period in order to properly consider and discuss these impacts, and direct, government-to-government consultation between the Navajo Nation and EPA at the highest levels.

Any questions concerning these comments or requests for additional information should be directed to Eugenia Quintana, Environmental Department Manager, Air & Toxics Department, 928-871-7800, eugeniaquintana@navajo-nsn.gov.

Respectfully submitted,



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⁶⁶ *Id.* at 50,246.