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Washington, DC 20460

To Whom It May Concern:

On behalf of the National Association of Clean Air Agencies (NACAA), we are submitting the following comments on the U.S. Environmental Protection Agency's (EPA's) proposed rule, "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review," which was published in the *Federal Register* on November 15, 2021 (86 Fed. Reg. 63,110). NACAA is the national, non-partisan, non-profit association of 153 state and local air pollution control agencies in 40 states, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based on that experience. The views expressed do not represent the positions of every state and local air pollution control agency in the country.

If finalized, the proposal would establish comprehensive standards of performance for greenhouse gas (GHG) emissions (in the form of methane limitations) and volatile organic compound (VOC) emissions for new, modified, and reconstructed sources in the Crude Oil and Natural Gas source category, including the production, processing, transmission and storage segments. EPA proposes emission guidelines containing presumptive standards for methane, which states would use to develop plans establishing standards of performance that they would implement and enforce upon EPA approval. The proposal updates and expands the New Source Performance Standards (NSPS) for the oil and natural gas sector that were finalized in 2016 (and replaced in a 2020 rulemaking that was subsequently disapproved by Congress in 2021 using the Congressional Review Act).

In general, NACAA supports the proposed rule, which would result in significant emission reductions from ozone precursors, air toxics and

GHGs, and which would create urgently needed public health and environmental benefits. The association's 2019 comments on EPA's ultimately-disapproved 2020 proposal¹ opposed the removal of some source subcategories and expressed concern about the regulatory mechanisms that would have yielded emission increases of VOCs and methane. The current proposal would address concerns NACAA previously raised about limiting the types of emissions being regulated and removing some subsector applicability. Moreover, the proposal's intent aligns with NACAA's January 15, 2021 letter setting forth our policy recommendations to the Biden Administration (hereafter, "transition letter"²), which called for EPA to "make a strong and urgent effort to lead the nation and global community towards comprehensive, inclusive and economically sound climate change mitigation and adaptation policies and regulations." We further wrote, "In the last four years, state and local agencies in NACAA have implemented programs that made meaningful progress towards reducing GHGs, but a strong, comprehensive federal approach is essential for providing lasting nationwide reductions, regulatory certainty and a more protective baseline for all states to meet." The proposed rule is one part of a broader federal answer to this call to work together to meet our shared goals for reductions in emissions of these air pollutants.

Nonetheless, state and local clean air agencies face a wide variety of circumstances and situations that will affect their ability to implement this rule if it is finalized as proposed. In this comment letter, NACAA identifies some of these issues and offers recommendations that would affect successful implementation of the rule. In particular, state and local air agencies have seen flat federal funding support for Clean Air Act implementation for nearly two decades, and for some agencies, meeting the additional regulatory requirements proposed will require additional resources. In addition to reiterating our longstanding call for EPA to meet its obligation to support adequate funding for its state and local co-regulators, our recommendations include steps EPA can take to streamline regulatory burdens, meet varied state needs with appropriate flexibility, support state and local agency implementation capacity, acknowledge and avoid constraints, and benefit from our experience.

Criteria Pollutants, Air Toxics, and Greenhouse Gases

With regard to the criteria pollutant emission implications of the proposal, the anticipated reductions in ozone precursors would help state and local agencies in their efforts to achieve and maintain compliance with the National Ambient Air Quality Standards (NAAQS). EPA says its proposed rule would reduce an estimated 12 million tons of VOCs from 2023 to 2035. This will be particularly important as more areas face reclassification under the 2015 ozone standards. Moreover, one predicted outcome of

¹ NACAA's November 22, 2019 comments on EPA's Proposed Amendments to the 2012 and 2016 NSPS for the Oil and Natural Gas Sectors are available at: https://www.4cleanair.org/wp-content/uploads/Documents/NACAA_Comments-Oil_Gas_NSPS-EPA_Proposed_Amends-112219.pdf

² NACAA's January 15, 2021, transition paper, "Improving Our Nation's Clean Air Program: Recommendations from the National Association of Clean Air Agencies to President-Elect Biden's and Vice President-Elect Harris' Administration" is available at: <https://www.4cleanair.org/wp-content/uploads/NACAA2021PresidentialTransitionDocument-01152021.pdf>

increased anthropogenic climate change is longer and more harmful ozone seasons³. This may mean greater effort will be needed by states and localities to meet and maintain compliance with the ozone NAAQS. In addition to significant local benefits from lower VOC emissions that might be reasonably anticipated in areas with high amounts of oil and natural gas sector activity, these reduced emissions will also reduce impacts from air pollution transported across state lines, which raise complex challenges for downwind states.

However, some proposed and final state programs addressing VOCs from the oil and gas sector use different approaches than what is proposed by EPA, and these approaches may be as or more stringent and protective than EPA's. EPA's rule should explicitly state that its emission reduction requirements are a baseline for all agencies, but that state and local regulatory agencies can use their own approaches if their needs are more effectively met with different paths that are overall at least as stringent and health-protective. Oil and gas operations also emit other criteria pollutants such as sulfur dioxide and nitrogen oxides, as well as air toxics including benzene, formaldehyde, toluene, ethylbenzene and xylene. EPA says that its proposed rule would reduce 480,000 tons of air toxic pollutants from 2023 to 2035. NACAA endorses and welcomes these potential pollution reductions.

EPA states that its proposal would reduce 41 million tons of methane emissions from the oil and natural gas industry between 2023 and 2035. These methane reductions should not only reduce harms and offer public health protections on a local basis but on a global one; they would help address the ongoing crisis facing the planet's climate. While not a criteria pollutant covered by the NAAQS, methane remains a potent climate pollutant with a global warming potential nearly 30 times that of CO₂. Restoring methane NSPS advances the agency's legal obligation to limit methane emissions from existing oil and natural gas sector sources. The resulting emission reductions would be a component of a federal response to NACAA's January 15, 2021 transition letter, which states: "Recognizing the overwhelming scientific evidence of the climate crisis, the Administration should implement a comprehensive federal strategy on climate change mitigation and adaptation that addresses all important sources, prioritizes public health, fosters prosperity and makes our nation a leader in technology advancements, emissions reduction strategies and climate justice." NACAA supports the proposal's goal to quickly and effectively curtail emissions of this potent GHG.

State Plans and Obligations

EPA's proposal outlines the best system of emission reductions (BSER) and resulting reductions achievable for the Oil and Natural Gas sector. The proposal also describes steps, requirements, and considerations associated with the development, submittal, and implementation of state, tribal, and federal plans, and provides the approach of using EPA's presumptive standards for state plans that would be developed in response to the adopted rule. Under EPA's proposal, states would submit plans for

³ Documented on EPA's website at <https://www.epa.gov/arc-x/climate-adaptation-and-outdoor-air-quality>

existing emission sources that establish standards that are as stringent as the presumptive standards, unless a demonstration is made meeting criteria for an exemption.

While the major components and overall direction of EPA’s regulatory approach are laid out in the preamble to this proposal, the agency has not proposed regulatory text, relying instead on supplemental and implementation rules that leave many questions unanswered. In order to achieve the cooperative potential of the Section 111(d) program, it is essential that EPA consult with state and local air agencies as it develops its supplemental proposal and its proposed rule concerning the implementation of Section 111 programs. State and local air agencies charged with implementing the rule have unique regulatory expertise and are leaders in the arena of GHG emission reduction programs; in particular, in reducing methane from the oil and gas sector. Our January 15, 2021 transition letter calls for EPA to “mine the knowledge of state and local regulators and apply it to the development of nationally consistent federal rules to reduce GHG emissions from industrial and other stationary sources regulated under the Clean Air Act.”

The Clean Air Act and Section 111(d) are built on a model of cooperation that requires EPA to work in partnership with states, cities and counties, among others, and by affording states additional – and essential – flexibility to chart compliance pathways, which can include emission limitations that are at least as stringent as the federal guidelines. EPA should retain its longstanding reliance on mandatory federal minimums coupled with state implementation flexibility to meet or exceed those environmental goals.

NACAA supports the development of an example state plan and model rule language for each segment of the oil and gas industry regulated by adopted rule that can be incorporated directly or by reference to meet EPA’s emission guidelines. While there are some state programs being implemented or proposed, many agencies will benefit from a model rule. The opportunity to adopt preapproved rule language, in addition to the option to develop a unique state plan in accordance with the guidelines, is consistent with the Clean Air Act’s cooperative approach and will expand state compliance options while conserving state resources.

EPA should also allow for programs with greater stringency or different, but at least equally stringent state approaches, by making a clear path for program equivalency application, demonstration, and determination. Where programs are less stringent in individual aspects but as or more stringent and protective overall, EPA should accommodate those tailored approaches that meet that state’s needs. EPA has demonstrated experience with creating a streamlined equivalency through the implementation of its NSPS subpart OOOOa provisions since 2016. States that have rules or well-developed proposals have already gone through robust public processes and rulemakings. Inasmuch as the forthcoming implementation rule proposal seeks to accommodate state programs, it should consider regulatory actions and timelines required in those states, and integrate flexibility into the rule that accommodates them.

While there is widespread support from air agencies for an approach that awards federal credit for state programs designed to reduce GHG emissions from the oil and gas sector, it is important that any state-level measures credited toward federal compliance be at least as effective overall as the federal minimums at delivering emission reductions, even if specific aspects of the programs are less stringent because of local circumstances, constraints, and needs. However EPA ultimately resolves these issues, the agency must be clear in its eventual guidance and offer a streamlined process for equivalency to give state and local agencies a high degree of certainty in leveraging their existing programs.

Constraints on Implementation

The state and local air pollution control agencies that will implement and enforce EPA's rule will face a great variety of challenges, but if finalized, the proposed rule will almost certainly require agencies to increase their investments in personnel and technical capabilities, and to incur other costs. The federal grants that support state and local clean air agencies remain, for now, funded at effectively the same levels as they were in 2004. Admittedly, some agencies will have few additional responsibilities under the rule because of the absence of sources in their jurisdictions. However, all agencies face inadequate resources to meet their existing and emerging Clean Air Act responsibilities. For agencies that have a daunting number of sources and already-stretched funding, human resources, and equipment, the rule will create implementation challenges if EPA does not become a more effective advocate for fully funding these agencies, and matching the regulatory responsibilities assigned to these agencies with the resources to carry them out. In addition, EPA support cannot simply come in the form of equipment procurement. Underinvesting in human resources, training, and technical assistance will yield challenges for planning, permitting, community engagement and enforcement by state and local agencies. In order to assure successful implementation, NACAA urges EPA to ensure that new burdens are paired with supplemental federal support and that they not come at the expense of resources already allocated for existing air programs.

EPA can also help manage additional implementation burdens by prioritizing and phasing its requirements under the rule to consider what the most resource-intensive actions are, and by balancing those actions with those that have the greatest demonstrated public health and environmental benefit. The speed and order of implementation steps must match the demonstrated availability of technologies and account for ongoing supply chain disruptions; EPA's investments in technical assistance and training must likewise consider limited available human resources and competition to qualified employees to the public sector. EPA seeks comment on how to address sources such as pigging, truck unloading, small well sites, and other sources. While these sources are important and can have significant emissions, offering states flexibility for phasing in regulatory programs addressing them could potentially be valuable as a strategy to manage regulatory burdens.

The proposal's consideration of a number of new tools, programs, and approaches (such as aerial surveillance, new monitoring and leak detection technologies, new community involvement programs, and new emission control devices, among others) is also welcome, but these measures will present a learning curve. EPA should focus its

technical assistance efforts at addressing that learning curve, and the proposal should allow for data collection opportunities where uncertainties remain. Achieving our shared goals for emission reductions may also be more successful if the agency prioritizes compliance assistance over example-setting enforcement in early years.

Public/Community Participation

EPA’s proposal calls for a “robust and meaningful public participation process” with provisions “to require states to identify and conduct meaningful engagement with underserved and overburdened communities as they develop state plans.” This outreach and engagement would include sharing information with all stakeholders throughout the plan development process and seeking their input before a plan is adopted and submitted to EPA. NACAA supports robust public engagement, especially with underserved and disproportionately impacted communities. This aligns with NACAA’s commitment to environmental justice.⁴ Should EPA mandate more robust public engagement and make it a federal requirement for plan approval, however, the agency must be more specific about what will be approvable and provide guidance to states. Some states have conducted robust analyses and implemented sophisticated programs, but not all agencies have done this work. EPA can help implementing agencies meet clearly articulated federal requirements by providing resources, guidance, trainings, and other support. Where agencies have completed their own analyses and developed tools and programs in consultation with their local communities and advisory groups, EPA should allow these to serve compliance needs, rather than simply mandating national adoption of federal tools.

Some NACAA members are at the cutting edge of achieving meaningful involvement of vulnerable communities in agency decision-making, with programs that have far longer track records and that are more robust than anything at the federal level. EPA can and should draw from and benefit from their experience. As with other aspects of the proposal, allowing state and local agencies flexibility will enable meaningful interaction that yields real benefits without being simply a performative checklist. State and local programs with deep experience in advancing clean air protection with and for vulnerable communities have learned that these efforts are very time- and resource-intensive, not just for agencies but for the communities themselves. Given the tremendous variety of communities, their needs, and their constraints, EPA should set expectations realistically and allow for the flexibility to truly meet the unique needs of these communities, as well as to reflect the economics and demographics of individual states. As EPA brings its own community support resources to bear, it should not be forgotten that some of the most affected communities will be closely tied socially and economically to the oil and gas industry. Resources should be targeted to help mitigate impacts to these affected communities as well.

⁴ NACAA’s “Mission & Values” and “Statement & Direction for Racial Justice” are available at http://www.4cleanair.org/sites/default/files/Documents/NACAAMissionValuesGoalsandRacialJusticeStatement-10_19_2020-noQ.pdf.

In addition to the requirement for states to provide for meaningful involvement of vulnerable communities, EPA is also seeking information on “how it could empower communities to help stem large emission events by detecting and reporting them to owners/operators for follow up and emission-reduction actions.” NACAA is supportive of empowering communities to understand the air they breathe and in protecting communities from harm, but in the absence of more specific information, we can only suggest that any program must prioritize public safety and discourage individuals from gaining proximity to pollution hazards for data gathering. EPA may wish to consider starting with a focus on improved data accessibility and transparency, making information more readily and easily available for the public to access and understand, in ways that productively enable their engagement. Where communities identify concerns, the proposal should include information about how appropriate action will be taken in response.

Other Implementation Concerns and Suggestions

EPA should consider the July 8, 2021 report of the Office of Inspector General on Synthetic Minor Source Permitting (Report No. 21-P-0175⁵), which recommends that EPA update its practical enforceability guidance and develop and issue new guidance with key EPA expectations for synthetic minor source permitting. As EPA moves to update its guidance on legal and practical enforceability, it should seek public comment on the updated guidance, which should inform any proposed definitions of “legally and practicably enforceable limits” in this rule.

NACAA endorses the use of technology wherever it ensures an effective program and particularly wherever it alleviates staffing and other resource shortages. NACAA’s January 15, 2021 transition letter calls on the agency to “use innovative mechanisms that provide industry and the public with flexibility and transparency relative to the path to lower emissions and provide the confidence and regulatory certainty necessary for companies to make the required investments.” As EPA moves forward with finalizing this proposal, we restate this call.

EPA’s proposal allows for the use of advanced methane detection technologies for leak surveys at well sites and compressor stations. NACAA supports the flexibility to use any technology or approach that meets a rigorous minimum detection threshold, but as EPA moves towards finalization of its requirements, the agency should consider and address potential scarcity of specific tools such as infrared cameras and other technologies that may be constrained by ongoing supply chain issues.

⁵ The July 2021 OIG Report, “EPA Should Conduct More Oversight of Synthetic-Minor-Source Permitting to Assure Permits Adhere to EPA Guidance”, is available at <https://www.epa.gov/office-inspector-general/report-epa-should-conduct-more-oversight-synthetic-minor-source-permitting>

Thank you for the opportunity to comment on the proposed changes to the oil and natural gas sector NSPS. If you have any questions about these comments, please do not hesitate to contact either of us or Miles Keogh, Executive Director of NACAA.

Sincerely,



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