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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 supplement to its 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 December 6, 2022 (87 Fed. Reg 74702)¹. NACAA is the national, non-partisan, non-profit association of 157 state and local air pollution control agencies located 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 supplemental proposal would build upon the November 11, 2021 proposed rule that 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.

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

¹ Available online at <https://www.federalregister.gov/documents/2022/12/06/2022-24675/standards-of-performance-for-new-reconstructed-and-modified-sources-and-emissions-guidelines-for>

2020 proposal² 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 Administration³, 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 raises concerns and recommendations that would affect successful implementation of the rule. In particular, NACAA raises issues with technical specifications, details for the development of state plans (including equivalency and stringency issues raised in the supplemental proposal), the provisions governing "meaningful engagement", the proposal's "Super Emitters" program, and the need to support state and local air agencies with federal funding support. Finally, this letter calls for EPA's deep engagement with states that will be affected by this rule either as oil and gas producing states, states that have existing methane regulations that will dovetail with these proposed regulations, or both. Our agencies have a track record of engaging with and effectively regulating this sector, and EPA would benefit from our experience.

Technical and Applicability Considerations

EPA has updated its figures in the supplemental proposal and now finds the programs would reduce 36 million tons of methane emissions from 2023 to 2035. While this is a lower volume than was estimated in the initial November 2021 proposal, these methane reductions would still significantly reduce harms and offer public health protections on a local basis, and 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.

² 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

³ 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>

Implementing emissions guidelines (EG) and New Source Performance Standards (NSPS) for methane from this sector 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.

The supplemental proposal expands the November 2021 proposal to address numerous additional sources through performance standards and guidelines. NACAA generally supports these expansions within the proposed rule, which would eliminate important loopholes and provide more complete and consistent protections. These technical considerations include the articulation of standards for liquids unloading operations, pneumatic pumps and dry seal compressors. NACAA also generally supports EPA’s proposed matrix approach for approving methane detection technologies, although we advocate EPA’s engagement with affected agencies to explore nuance and specifics that vary by location, rather than depending entirely on detection limits and a basis for selection. In addition, NACAA supports the extension of requirements for reducing flaring equipment malfunctions and limitations on flaring where alternatives are available; NACAA again recommends engagement with affected agencies to ensure that any final rule offers agencies implementation flexibility that considers safety and technical feasibility. Finally, EPA explores in the supplemental proposal a number of comments questioning whether Appendix K is an appropriate basis for wellsite monitoring, and NACAA recommends further engagement with clean air agencies to assure that leak detection methods and requirements are appropriate to the facilities being regulated.

One area of the proposal that offers a measure of uncertainty is the extension of wellsite monitoring to apply to the smallest wells. On November 23, 2022⁴, NACAA requested an extension of the comment period for this proposal in order to analyze technical aspects such as the implications of this extension of applicability. EPA denied this request on February 3, 2023⁵. As such, NACAA cannot offer a detailed response about the implications of discontinuing waivers for these sources, or unqualified support for these provisions of the proposal if they are not given the resources to succeed. Anecdotally it appears as though this expansion could represent a dramatic increase in the responsibilities falling to state and local clean air agencies to permit, monitor, inspect, and assure compliance by, these wells. NACAA champions the goal of reducing wellsite emissions, but new programs will require new resources, and EPA cannot ignore the possibility that this provision could overburden them beyond state and local agencies’ ability to successfully implement it. EPA should better understand these implications,

⁴ This letter is available online at <https://www.4cleanair.org/wp-content/uploads/NACAA-OilandGasSectorExtensionRequest-11292022.pdf>

⁵ This letter is available online at <https://www.4cleanair.org/wp-content/uploads/EPA-methane-extension-denial.pdf>

and where they increase the responsibilities of our agencies, EPA should take steps to assure those responsibilities are met with appropriate federal support and resources for implementation.

State Plans

Section 111 regulations create a pivotal role for state air agencies as they create plans for compliance based on the Best System of Emissions Reduction (BSER). State and local 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.”

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 that are already being implemented or well developed in the proposal stage, 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.

The separately-proposed 111 implementation rule published in the *Federal Register* (“Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111[d]”, 87 Fed. Reg. 79176) by EPA on December 23, 2022⁶ changes the deadline for the provision of plans, shortening the time to submit a state plan under Section 111 to EPA from 3 years to 15 months. The proposed supplemental rule also reflects a shortened compliance window, in this case to 18 months. NACAA recommends EPA engage with agencies to determine whether this offers sufficient time for administrative rulemaking and meaningful public engagement. For more complex requirements under Section 111 that would fall under the proposed December 23, 2022 Implementing Regulations for which EPA does not provide model rules, more time may be needed to develop the required state plan. NACAA may raise this issue in response to that rulemaking as well.

EPA’s proposed supplemental rule also creates changes in the determination of when a plan becomes applicable. Regulations under Subpart B determined that a plan came into effect once approved by EPA; the proposed supplemental determines that applicability begins when a plan is proposed by the state agency. This will create confusion and regulatory uncertainty under a hypothetical circumstance where a state plan is subsequently disapproved by EPA, and EPA should disambiguate this circumstance before a rule becomes final.

Equivalency Determinations

Under EPA’s proposal, states would submit plans for existing emission sources that establish standards that generally are as stringent as the presumptive standards,

⁶ Online at <https://www.federalregister.gov/documents/2022/12/23/2022-27557/adoption-and-submittal-of-state-plans-for-designated-facilities-implementing-regulations-under-clean>

unless a demonstration is made meeting criteria for an exemption. EPA should also allow for programs with greater stringency or different, but at least equally stringent state approaches, by clarifying aspects of the proposal related to program equivalency application, demonstration, and determination. 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 and programs included in these equivalencies are frequently a part of approved State Implementation Plans (SIPs). EPA should give due weight to these regulatory investments and existing SIP approvals. 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.

EPA may wish to offer more clarity and specificity in its articulation of Steps 2 and 3 of the equivalency determination, particularly offering clarity about the approval of alternative technologies. EPA should also establish guidance and work with each state that has developed methane regulations - the number of affected agencies is very reasonable and this would pose little burden on EPA. In addition, ongoing resources should be devoted to offering cooperative and consultative technical support to these states as EPA determines equivalency. EPA should be consistent across different regions in these determinations. 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.

Application of Stringency

The Clean Air Act and its Section 111 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’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. Some clean air agencies may have needs that more urgently prioritize these pollutants (or others) or prioritize specifically vulnerable communities (such as environmental justice communities or those most vulnerable to economic impacts of the rule.) EPA may also wish to offer consistent and transparent discretion to adapt to a variety of disadvantaged community needs, and understand with greater precision the economic effects of its rule on specific communities dependent on production. Where an agency can demonstrate reductions using approaches that are driven by other pollutants or that offer locally-prioritized benefits of sufficiently demonstrated value, EPA should work with state and local agencies to meet their goals through this program.

Programmatic requirements may be equivalent, but wording and specific standards may be different for states with existing programs, and EPA should

accommodate these variations. 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 agency's needs. With regard to the application of exemptions to disadvantaged or vulnerable communities, the EPA intends to allow these considerations in their determination of stringency, EPA should be clear about those criteria and their application before a rule is finalized.

Meaningful Engagement

EPA's supplemental 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.⁷ 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 be up-front about providing guidance to states that identifies communication objectives as well as outlining the process and methods of engagement.

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. 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.

⁷ 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.

Super Emitter Response Program Proposal

The proposal articulates a “Super Emitter Response Program” wherein an owner or operator that receives notifications of detected methane emissions that are 100 kilograms per hour will be required to take action to address those emissions. These actions would be triggered from reports filed by certified third parties including technology vendors, non-profit organizations, industry, researchers, or other parties demonstrating technical expertise, using remote sensing from aircraft, mobile monitoring platforms, and satellites.

EPA’s efforts to create streamlined pathways for data to be actionable for these events is laudable. However, aspects of the proposal remain concerningly ambiguous and could render the proposed program unworkable, counterproductive, and/or superfluous. The Super Emitter Response Program is a novel program without precedent, that lies outside the usual delegation of authority to state and local air agencies that the Clean Air Act is built on. EPA should be more explicit in citing its specific authority to implement if it proceeds, or make the program legally severable to protect the remainder of the methane proposal from court challenges. If EPA determines that it will not proceed with the Super Emitter Program as proposed, there are many options available for EPA to leverage its own remote sensing and other detection programs. The Inflation Reduction Act offers significant resources for satellite and other programs that EPA can use to detect super emitter events and situations. EPA may wish to augment its own detection programs 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.

In addition to the technical considerations raised later in this letter, an overall concern with the Super Emitter Response Program as described in the proposal is that is vulnerable to “the Twitter problem”: when different parties’ information conflicts, it can create challenges for knowing whose information to trust. The public sector has a responsibility to regulate in the public interest that may not be the institutional first priority of third party stakeholders like vendors, advocates, and others. Misinformation (and even well-meaning but inaccurate information) can often spread more rapidly than can be countered with supported factual information from credible sources like clean air agencies. When its spread outpaces accurate information, it can dominate public discourse and undermine trust in even the strongest and most credible public institution. By its own admission, EPA states in the supplemental proposal that EPA would not verify or authenticate the information in third party reports before posting it online and triggering regulatory action, a concerning detail. The importance of careful implementation of such a program cannot be overstated: the credibility of the federal, state, and local agencies that implement the Clean Air Act is indescribably valuable when advancing the protection of clean air for all, and EPA should be prudent about implementing programs that are vulnerable to misinformation that could harm that credibility.

If EPA chooses to proceed, numerous clarifications will be important prior to finalization. Although EPA has articulated that only applications leveraging remote sensing platforms are approvable, the supplemental proposal offers little clarity about the approvable sensing methods borne on these platforms. The proposal also offers little

clarity about the necessary demonstrated expertise for third parties. Among other clarifications, EPA should be explicit that state and local clean air agencies can be presumed as qualifying; EPA should also offer a high level of clarity about other approved third parties. In addition, if EPA proceeds with this program, the agency should make transparent and publicly disclose what other qualified parties have been certified, and provide more robustly considered and detailed description of how submitted data would be disclosed. Moreover, EPA should consider whether its Super Emitter Response Program in fact marshals the resources to address the largest, most concerning sources. EPA's supplemental proposal cites research that holds that the top five percent of sources account for over fifty percent of emissions (with results that vary by production basin), and that many of the provisions included in EPA's 2021 proposal and 2022 supplemental proposal would prevent most of these events (by requiring improved equipment and facility performance and by improving monitoring that can detect malfunctioning or improperly operated equipment.) EPA may wish to consider if the backstop program to augment these other provisions that would make more sense focuses on basin-wide detection and reporting, rather than specific equipment or facility reporting. Backstopping with detection and actionable reporting at the basin level, that would address multiple sources, would involve different detection methods, thresholds, and other parameters, but may serve as a more appropriate backstop that would trigger effective compliance assurance efforts by the appropriate agencies.

Funding and Resources for Implementation

The Inflation Reduction Act includes significant funding resources to address methane emissions, and EPA should use these to augment its own capabilities and to support the capabilities of state and local air pollution control agencies that will implement and enforce EPA's rule. These agencies continue to 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 deploy resources to match 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 using IRA funding. Developing new capabilities related to this rulemaking should not come at the expense of resources already allocated for our existing air programs.

Thank you for the opportunity to comment on the EPA's supplemental proposal to reduce emissions in methane and VOCs from the oil and gas sector. 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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