June 13, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: GPA Midstream Association Letter on Climate Change Disclosures in Response to SEC Request for Public Input

Dear Chair Gensler:

The GPA Midstream Association ("GPA Midstream") appreciates the opportunity to submit its comments to the request by the Securities and Exchange Commission (the "SEC" or the "Commission") for public input on climate change disclosures.[1] GPA Midstream members are committed to transparency in environmental, social, and governance ("ESG") matters. Our response focuses on guidelines the SEC should adhere to as it considers whether to propose additional disclosure requirements. If additional disclosures are proposed, the Commission should consider a flexible company-specific approach guided by a materiality assessment focused on the SEC's long-standing principles of financial materiality and a liability standard applicable to "furnished" information that would allow the market to assess the accuracy of the disclosure.

GPA Midstream has served the U.S. energy industry since 1921 and has nearly 70 public and privately owned members that directly employ more than 75,000 employees who are engaged in a wide variety of services that move vital energy products such as natural gas, natural gas liquids ("NGLs"), refined products and crude oil from production areas to markets across the United States, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 450,000 jobs across the U.S. economy. GPA Midstream members recover more than 90% of the NGLs such as ethane, propane, butane, and natural gasoline produced in the United States from more than 400 natural gas processing facilities. In the 2017-2019 period, GPA Midstream members spent over $105 billion in capital improvements to serve the country's needs for reliable and affordable energy.

At GPA Midstream, we are the primary advocates for a midstream energy sector focused on enhancing the long-term viability of natural gas, natural gas liquids, and crude oil. We

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[1] Allison Herren Lee, Public Statement on Public Input Welcomed on Climate Change Disclosures (March 15, 2021).

develop standards, conduct industry research, educate our workforce, and improve operational safety. As advocates, we work with legislators and regulators to promote a safe and viable midstream sector. This includes our commitment to minimizing greenhouse gas ("GHG") emissions from our facilities while providing essential products and services to the global economy.

With the ever-increasing interest in the reporting of ESG information, GPA Midstream joined an effort with the Energy Infrastructure Council ("EIC") to develop the EIC/GPA Midstream ESG Reporting Template that will guide members of both organizations as they develop ESG disclosures. As part of this expansive effort, the joint leadership team engaged with investor groups, while also meeting with standard setters to learn more of their approach. This was a robust initial step, for what is a challenging undertaking across industry, but particularly in the midstream sector as our products move throughout an extended supply chain. From gas emissions to diversity, hydrocarbon releases to asset diversification, and biodiversity — we expect this framework to evolve over time to ensure it takes into account the evolving ESG landscape and the progression of midstream company ESG journeys. Our members are committed to measurable improvements and transparency in ESG matters.

Accordingly, as the SEC evaluates whether to propose additional ESG disclosures, we urge it to avoid the wholesale adoption of existing reporting frameworks and retain its traditional materiality standard and appropriate flexibility; ensure that any additional disclosure requirements be consistent with other regulatory requirements to minimize duplicative requirements and undue burdens on corporate issuers; provide that any new disclosures may be "furnished" rather than "filed"; provide a liability safe harbor specific to ESG information reported in good faith; and avoid a mandatory audit requirement.

1. The Commission Should Avoid the Wholesale Adoption of Third-Party Reporting Frameworks, Retain the Traditional Materiality Standard and Allow Appropriate Reporting Flexibility

The Commission should avoid the wholesale adoption of existing frameworks developed by third parties, which may require information that is not relevant to investors across all industries and could add confusion and harm market efficiency. To the extent that the Commission decides to consider existing reporting frameworks such as those developed by the Sustainability Accounting Standards Board ("SASB") and the Task Force on Climate-related Financial Disclosures ("TCFD"), as it develops its own proposed additional disclosure requirements, we urge the Commission to allow companies to choose and tailor a framework as appropriate to their specific business operations while continuing to apply the historical materiality standard that is fundamental as a threshold for considering SEC disclosure.

Existing third-party reporting frameworks do not adhere to important SEC reporting concepts. In particular, while SASB advocates that its standards are "designed to be cost-effective for companies to implement and decision-useful to both companies and investors,"[2] they do not necessarily align with financial materiality standards that are appropriate for

[2] SASB Website, "Standards." Available at www.sasb.org/standards/.

purposes of SEC disclosure. SASB's Materiality Map® identifies sustainability issues that are likely to affect the financial condition or operating performance of companies within an industry.[3] It determines a level of materiality based on a sector and industrial level.[4]

However, a sector- or industry-wide "materiality" standard is incompatible with the company-specific materiality standard that is fundamental in SEC reporting. Under SEC Rule 405, the term "material" where used as a qualifier to provide disclosure "**limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance** in determining whether to purchase the security registered."[5] Similarly, the Financial Accounting Standards Board ("FASB") conceptualized materiality — and the Commission relies on such statement — as "if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item."[6]

The differences between SASB's standards, focused on sector and industrial levels, and the SEC's standards, focused on materiality from the perspective of an investor's decision to purchase a specific security, rightfully differ. Accordingly, the SEC should continue to apply its historical materiality standard to any disclosure requirements that it adopts based on existing ESG frameworks as the threshold for companies in furnishing decision-useful information to investors. Such approach would also avoid unnecessary costs for companies and overload of unnecessary information to investors. When the length of disclosure documents increases with information that is not material, it becomes more difficult for investors to find salient information.

In addition, we urge the Commission to ensure that if it chooses to look to a third party standard setter, such as SASB, that the third party has the necessary industry-specific expertise and independence and appropriate regulatory oversight. Further, any adoption of, or amendment of, standards developed by a third-party must be based on the Commission's robust independent judgment following a notice and comment rulemaking process in accordance with the Administrative Procedure Act. Measuring ESG metrics can be extremely challenging, requiring care in setting standards that apply to extraordinarily diverse enterprises. It would be crucial to have procedures in place to ensure proper engagement with covered industries and input and guidance from external experts. Having an ongoing mechanism to engage with industry and an independent governance structure will provide more robust standards that fit with the realities of the marketplace. For example, the FASB routinely requests and receives external stakeholder input through a transparent and inclusive process intended to promote financial reporting that provides useful information to investors.

If and to the extent that the Commission relies on a foundation of these third-party frameworks, we encourage the Commission to ensure that companies have the flexibility required to tailor their disclosures as appropriate to provide material information applicable to their businesses. If a given metric is not material to a company's business, the company should

[3] SASB Website, "SASB Materiality Map." Available at https://materiality.sasb.org/.
[4] *Id*.
[5] 17 CFR § 230.405. See also 17 CFR § 240.12b-2.
[6] SAB 99, 70 SEC Dock. 785 (1999).

not be required to include that metric in disclosure. ESG risk factors differ from company to company and from industry to industry, leaving no appropriate "one-size-fits-all" approach. Any ESG reporting framework that will be informative and decision useful to investors should be correspondingly diverse. Applying a flexible approach would allow companies to assess and disclose information on their specific, material ESG risks and opportunities where such information is relevant, material, and useful to their investors. We note that even SASB supports such flexibility as it currently encourages companies to use its standards to guide disclosures to investors even in the event that certain disclosure topics and/or associated metrics must be omitted and/or modified. Such a mechanism would ensure investors receive disclosures appropriate for informative decision-making and provide the right degree of flexibility necessary for companies.

While we recognize that comparability of reported information might be ideal, we also urge the Commission to cautiously evaluate whether certain metrics and data can truly be comparable and to consider that comparability may be unattainable. For example, absolute GHG emissions do not necessarily reflect an apples to apples comparison among companies and will vary depending on how each company participates within the midstream value-chain (i.e. gathering and compression, processing, transmission, storage, etc.), which may be better evaluated based on other metrics, such as the intensity of the emissions at issue for each sector of the hydrocarbon value-chain. Similarly, divestment and acquisition could change the absolute GHG values associated with one enterprise, without any real change in emissions. Without recognition of these types of issue, reporting a change (such as a new higher absolute total) could be taken out of its context and ultimately confusing to investors. Absolute emissions likewise need to be considered in light of the asset bases, which will differ dramatically across industry and within the same sector. Thus, the same emission levels for two companies could have very different implications for the companies and their investors, depending upon the age, type and emissions profile of their assets. Even SASB recommends that for all metrics, a company consider — and disclose — the qualitative information that would be necessary for investors to fully understand the firm's performance, which may involve incorporating relevant contextual information.

2. Any Measures Adopted by the Commission Should Minimize Duplicative Requirements and Undue Burdens

Many companies, including GPA Midstream members, already gather and report extensive climate information under other existing regulatory requirements. The SEC should consider these requirements and avoid fashioning any new data gathering and reporting requirements that would duplicate or conflict with existing programs.

Specifically at the federal level, the U.S. Environmental Protection Agency's ("EPA") Greenhouse Gas Reporting Program ("GHGRP") requires reporting of GHG data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO2 injection sites in the U.S. According to EPA, the purpose of this requirement is to gather a comprehensive, nationwide emissions data set to provide the public with a better understanding of the sources of GHGs and to guide agency development of policies and programs. This GHG data is also the foundation of the "E" reporting in the EIC/GPA Midstream ESG Reporting Template referenced above.

Approximately 8,000 facilities are required to report their annual emissions. This includes facilities of GPA Midstream members, as the GHGRP extends to onshore natural gas gathering and boosting, which includes the gathering pipelines and other equipment used to collect natural gas from onshore production wells and to compress and transport the gas to a natural gas processing facility, transmission pipeline, or a distribution pipeline. The GHGRP also covers natural gas processing plants that separate natural gas liquids from produced natural gas.

Although the GHGRP does not require third-party verification, EPA has included a data verification process, as the GHGRP provides electronic verification of annual reports. Before submission, there are checks built into the Electronic Greenhouse Gas Reporting Tool ("e-GGRT") — the on-line tool used to report GHG data directly to EPA to provide data validation. Reporters are also required to self-certify the data they submit to EPA and, after submission, EPA electronically verifies the data through the use of statistical, algorithm, range, and other verification checks. When needed, EPA conducts direct follow-up with facilities concerning potential data quality issues.

To allow sufficient time to gather and process the necessary data, EPA has required that sources provide their GHGRP reports by March 31, for the previous calendar year. EPA then completes its verification process before publishing the data in October.

If the SEC were to impose a separate reporting obligation that differs from the process/scope required by the EPA program, there is the risk of confusion with different, and potentially inconsistent, data being made available to the public. The SEC should avoid imposing prescriptive disclosure requirements for areas outside of its expertise, such as for GHG data and emissions. Further, to calculate GHG emissions for purposes of the 10-K in the January/February time frame, when a separate report must be submitted to EPA at the end of March, would add duplication and impose an additional burden on an already time consuming effort that requires significant resources in order to meet the EPA's March deadline.

3. Any Disclosure Requirement Should be Based on a "Furnished" Rather than "Filed" Standard and Include a Liability Safe Harbor

GPA Midstream believes the appropriate liability standard for any new ESG disclosures should be the standard of liability applicable to "furnished" information rather than "filed." Such a standard would fit the evolving stage of ESG disclosures and complement existing market incentives to abide.

ESG reporting may include scenario analysis, estimates and assumptions based on future events, and is an evolving area of disclosure. We believe, that the incremental liability standards imposed on information <u>filed</u> with the SEC would be inappropriate at this stage. It would be incompatible with the nascent and evolving nature of this type of disclosure and disincentivize broader disclosures.

Instead, the liability standard applicable to "furnished" information fits the level of uncertainty inherent in ESG disclosure if required. ESG disclosure — unlike many disclosure items that companies provide — relies upon scenario-based projections and assumptions to a large extent and can be subject to uncertainty and ranges. The liability standard imposed on information filed with the SEC is inappropriate for these types of forward-looking projections.

We suggest the SEC also consider a general liability safe harbor for good faith disclosures made pursuant to any new framework. GPA Midstream member companies are already voluntarily disclosing their ESG-related information outside of the SEC reporting regime. Since the release of the EIC/GPA Midstream ESG Reporting Template in December 2020, more and more energy companies either completed an early adoption or are gathering their data and planning to do so later this year. Other industries have voluntarily adopted similar standards of equivalent frameworks, and investors continuously reward them for doing so or actively demand it where disclosures are lacking. To the extent that the SEC adopts any ESG reporting requirements, it should also adopt appropriate liability protections, which would help maintain this ecosystem in which companies have a platform to disclose their good-faith goals, and provide a useful model of disclosing predictions and assessments to investors. We believe a safe harbor for good faith disclosure would allow the Commission to protect investors, yet maintain fair, orderly, and efficient markets, without compromising the reliability of the disclosure.

4. The SEC Should Not Adopt An Audit Requirement for ESG Disclosures

Regardless of the specific standard that the Commission may choose to propose, GPA Midstream urges the SEC not to impose an audit or reasonable assurance requirement, as an audit would be an inappropriate process to enforce and assess climate disclosures. The audit process examines, as audit letters opinions repeatedly restate, "whether the financial statements present fairly, in all material respects, the financial position of the company." Most climate-related disclosures — like many other descriptive disclosures — are not "financial" in their very nature.

For example, the expertise required to inspect such information is not of the nature that auditors ordinarily possess. Auditors may consider ESG disclosures — again, like many other disclosures — when evaluating the business as a going concern, or in any other general context. It is not reasonable, however, to expect an auditor to assess, for example, whether a GHG emission metric was properly calculated and "fairly represents" the position of the company.

In addition, ESG disclosures encompass vast amounts of technical and complex information with distinct language, concepts, and methodologies. Companies already have well-developed systems in place to collect and provide complete and accurate information to regulators, including, as noted, as part of the EPA GHG Reporting Program that itself already has an EPA verification process. If these disclosures were subject to an additional mandatory third-party audit or reasonable assurance requirement, companies would need to incur significant additional costs to design, document, and implement an additional control environment for climate change data to conform to an entirely new mandatory framework. The burden of such costs would limit a company's discretion and ability to provide the meaningful and decision-useful disclosures investors desire.

Furthermore, the independent and distinct identity of ESG disclosures, their breadth, and lack of monetary characteristics, make such disclosure a poor fit for an audit or third-party reasonable assurance mandated by the Commission. The SASB, for example, has developed a complete set of 77 Industry Standards, based on a Conceptual Framework and Rules of Procedure. The comprehensiveness of ESG disclosures, which vary across industries, make such disclosure an independent discipline. We believe the market itself, along with a streamlined framework accompanied by legal liability, provide a complete and adequate mechanism to enforce and assess the accuracy of ESG disclosures.

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GPA Midstream appreciates the opportunity to share its perspectives on the Commission's efforts to evaluate whether to propose additional ESG disclosures, and we thank the SEC for considering our views. If you have any questions regarding this letter, please contact Matt Hite at mhite@gpamidstream.org or (202) 279-1664.

Respectfully submitted,

Matt Hite
Vice President of Government Affairs
GPA Midstream Association