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U.S. Environmental Protection Agency
EPA Docket Center
Mailcode 2822IT
Attention: Docket ID No. EPA-HQ-OAR-2017-0757
1200 Pennsylvania Avenue, NW
Washington, DC 20460

November 25, 2019

Re: Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, EPA-HQ-OAR-2017-0757, 84 Fed. Reg. 50,244 (Sept. 24, 2019)

Dear Docket Clerk:

GPA Midstream Association ("GPA Midstream") appreciates this opportunity to submit comments to the U.S. Environmental Protection Agency ("EPA") on its proposed rule, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 84 Fed. Reg. 50,244 (Sept. 24, 2019) ("Proposed Rule").

GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 80 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing.

GPA Midstream members construct and operate gathering and boosting compressor stations, gathering lines, and natural gas processing plants. Our members would be affected directly by the Proposed Rule, which would revise the 2012 Rule (40 C.F.R. Part 60, subpart OOOO) and 2016 Rule (40 C.F.R. Part 60, subpart OOOOa). The EPA new source performance standards are among the most far reaching federal Clean Air Act rules regulating the midstream sector. Thus, GPA Midstream is heavily invested in ensuring that the new source performance standards for the Crude Oil and Natural Gas Production source category are legally justified, cost effective, and provide regulatory certainty to our members. The comments that are being submitted herein support the established legal mechanisms by which the EPA regulates emissions to protect

public health and welfare and do not necessarily reflect the policy positions GPA Midstream member companies may have on reducing methane or other emissions.

Summary

As discussed below, GPA Midstream urges EPA to finalize the Proposed Rule. Specifically:

- GPA Midstream supports EPA's proposal to withdraw transmission and storage emission sources from the Crude Oil and Natural Gas Production source category. EPA correctly proposes to find that the Agency did not include transmission and storage sources in the 1979 and 1985 rulemakings in the source category – and did not properly add these sources when EPA added subparts OOOO in 2012 and then OOOOa in 2016.

- Further, GPA Midstream supports EPA's proposal because it reflects sound policy, as the Proposed Rule would encourage energy infrastructure development. Withdrawing transmission and storage emission sources from the Crude Oil and Natural Gas Production source category would greatly clarify the extent of the source category itself and the procedures for expanding an existing source category. These changes will provide the regulatory certainty needed to help sustain continued investment in midstream infrastructure.

- GPA Midstream also supports EPA's proposal to find the methane requirements for the production and processing sources remaining in the source category are entirely redundant of controls for volatile organic compound ("VOC") emissions from those same sources. Withdrawing methane regulations for the Crude Oil and Natural Gas Production source category would eliminate redundant regulations that provide no benefits to the public and cannot justify the additional costs and burdens on industry.

- Given the two primary actions proposed, GPA Midstream does not believe it is necessary to determine whether the 2016 Rule required a significant contribution finding, whether it provided a legally valid significant contribution finding, or what criteria should be used for such a finding. EPA should instead address that question in a separate rulemaking that is informed by stakeholders from other sectors that also would be interested in the issue. Deferring the issue would also allow EPA to focus on finalizing the core rulemaking here, as well as to streamline the issues that would be presented in any future legal challenge to a final rule.

- However, if EPA is determined to finalize a rule related to the significant contribution finding, GPA Midstream would urge EPA to make two findings. First, EPA should conclude that the 2016 Rule failed to provide a valid significant contribution finding, as it was based on an endangerment finding promulgated under a different statute using a different standard for a different industry and examining a different pollutant. Second, EPA should provide specificity for future new source performance standard significant contribution findings. Hence, any criteria for a significant contribution finding should adhere to the statutory language, be specific to the air pollutant emitted by the source

category and particular potential endangerment involved, and provide objective measures to determine whether the source category's contributions are "significant."

- Additionally, GPA Midstream outlines several technical issues EPA should address in comments VII through X.

Statutory and Regulatory Background

NSPS Program. The premise behind the New Source Performance Standards ("NSPS") program is relatively simple and straightforward. For each "new source" that the Administrator believes "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger the public health or welfare," the Administrator shall promulgate a "standard of performance." 42 U.S.C. §§ 7411(a), (b)(1)(A). In determining priorities for creating those standards of performance, "the Administrator shall consider (A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit; (B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and (C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance." *Id.* § 7411(f)(2).

The Crude Oil and Natural Gas Production Source Category. The NSPS for the Crude Oil and Natural Gas Production source category has a complex regulatory history. EPA created the source category in 1979, 44 Fed. Reg. 49,222 (Aug. 21, 1979), and promulgated performance standards for VOC and sulfur dioxide emissions for that source category in 1985. 50 Fed. Reg. 26,122 (June 24, 1985) (VOC emissions found at 40 C.F.R., Subpart KKK); 50 Fed. Reg. 40,158 (Oct. 1, 1985) (sulfur dioxide emissions found at 40 C.F.R., Subpart LLL).

Subpart OOOO – 2012 Rule. EPA subsequently added Subpart OOOO in 2012, regulating VOC emissions from oil and gas wells, compressors, pneumatic controllers, storage vessels, and leaking components from onshore natural gas processing plants, as well as sulfur dioxide emissions from onshore natural gas processing plants. 77 Fed. Reg. 49,490 (Aug. 16, 2012) ("2012 Rule"). Several industry and environmental groups petitioned for review of the rule in the U.S. Court of Appeals for the District of Columbia Circuit.[1] In addition, EPA twice granted reconsideration of certain aspects of the Subpart OOOO rule and promulgated additional definitional provisions. 78 Fed. Reg. 58,416 (Sept. 23, 2013) (storage vessel requirements); 79 Fed. Reg. 79,018 (Dec. 31, 2014) (well completion provisions); 80 Fed. Reg. at 48,262 (definitions of low-pressure gas well and storage vessels).

Subpart OOOOs – 2016 Rule. In 2016, EPA imposed methane regulations on the Crude Oil and Natural Gas Production source category, despite the absence of any National Ambient Air Quality Standard for methane in particular or greenhouse gases in general. 81 Fed. Reg. 35,824 (June 3, 2016) ("2016 Rule"). Several industry groups, including GPA Midstream, and the States of North Dakota and Texas filed petitions for review of this rule.[2] Further, EPA received several

[1] *See Amer. Petroleum Inst.*, Case No 13-1108 (D.C. Cir.) (listing consolidated cases).

[2] *See id.* (listing nine additional petitions for review consolidated with Case No. 13-1108).

other petitions for reconsideration and for a partial stay of the 2016 Rule, including a petition by GPA Midstream. 82 Fed. Reg. 25,730 (June 5, 2017). Due, in part, to the President's Executive Order No. 13783, *Promoting Energy Independence and Economic Growth*, 82 Fed. Reg. 16,093 (Mar. 31, 2017), EPA issued a three-month stay for certain requirements of the 2016 Rule, 82 Fed. Reg. 27,641 (June 16, 2017), which was vacated by court order. *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017). EPA subsequently agreed to reconsider portions of the 2016 Rule. 83 Fed. Reg. 52,056 (Oct. 15, 2018). The combined challenges to the 2012 Rule and the 2016 Rule, however, remain pending, while EPA evaluates the reconsideration requests.

Argument

As explained in GPA Midstream's August 2, 2016 petition for reconsideration of the 2016 Rule and other materials previously submitted to EPA, including comments and white papers, the midstream industry requires regulations that are cost-effective, provide clear guidance, and avoid uncertainty.[3] EPA's Proposed Rule has the potential to resolve a significant portion of the litigation that currently clouds the industry's regulatory obligations and set a precedent for objective, rational, and legally supportable NSPS regulations in the future.

I. EPA Did Not Follow Proper Procedures When it Added Transmission and Storage Emission Sources to the Crude Oil and Natural Gas Production Source Category

GPA Midstream agrees that the 2012 Rule and 2016 Rule improperly expanded the scope of the Crude Oil and Natural Gas Production source category to include transmission and storage emission sources. 80 Fed. Reg. at 56,594. EPA must do more than merely "interpret" previously defined source categories to have included new types of emission sources all along. Instead, as EPA correctly reasoned in the Proposed Rule, the Agency must undertake a formal analysis under Section 111(b)(1)(A) – and make the necessary findings specifically for the newly integrated emission sources – which it did not do in either the 2012 or 2016 rulemakings.

A. Prior rulemakings did not include natural gas transmission and storage emission sources within the Crude Oil and Natural Gas Production source category.

EPA initially listed the Crude Oil and Natural Gas Production as a source category in 1979. 44 Fed. Reg. 49,222 (Aug. 21, 1979). The 1979 listing specified "categories of major stationary sources," but did not include transmission and storage within the scope of the "Crude Oil and Natural Gas Production" category. Indeed, neither the final rule nor the Proposed Rule, 43 Fed. Reg. 38,872 (Aug. 31, 1978), provided any detailed description of the source category beyond the common understanding of oil and gas "production" being when the resource is produced. Thus, EPA provided no notice, through either formal definition or interpretation, that notwithstanding the plain language in the title of the category, any emission sources downstream from or otherwise outside of "oil and natural gas production" could or would ever be included.

[3] EPA-HQ-OAR-2010-0505-7679.

Rather, the indications at the time were to the contrary. For instance, at the time it created the Crude Oil and Natural Gas Production source category, EPA considered stationary pipeline compressor engines to be a separate source category. EPA, Revised Prioritized List of Source Categories for NSPS Promulgation, EPA-450/3-79-023 (Mar. 1979) at 17. EPA could have concluded that pipeline compressor engines, and similar downstream emission sources, fell under the Crude Oil and Natural Gas Production source category. Instead, they were deemed to be a separate grouping of emission sources that would be regulated at a later time.

Later, when EPA defined the source category, it clearly did not include transmission and storage emission sources. Specifically, EPA provided a definition of the Crude Oil and Natural Gas Production source category when it issued proposed rulemakings to implement what is now Subparts KKK and LLL. 49 Fed. Reg. 2,636 (Jan. 20, 1984) (NSPS for VOC emissions from onshore natural gas processing sources); 49 Fed. Reg. 2,656 (Jan. 20, 1984) (NSPS for SO_2 emissions from onshore natural gas processing sources). There, consistent with a common sense understanding of the category, EPA defined the source category as "encompass[ing] the operations of exploring for crude oil and natural gas products, drilling for these products, removing them from beneath the earth's surface and *processing these products* from oil and gas fields *for distribution to petroleum refineries and gas pipelines*." 49 Fed. Reg. at 2,637 (emphases added). EPA's definition made it absolutely clear that the source category excluded emission sources related to the "distribution" of products "to petroleum refineries and gas pipelines." *Id.*

B. The 2012 and 2016 Rules did not support a revised definition of the Crude Oil and Natural Gas Production source category

Although EPA has the authority to revise a source category under Section 111(b), *see* 42 U.S.C. § 7411(b)(1)(A) (and "from time to time shall revise"), the 2012 and 2016 rulemakings did not include sufficient information to properly revise the Crude Oil and Natural Gas Production source category under either the terms of Section 111(b) or the Administrative Procedure Act. *See*, *e.g.*, *Motor Vehicle Mfrs. Assoc'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 56-57 (1983) (administrative agencies must provide "a reasoned analysis" to revise prior determinations). As such, EPA's Proposed Rule correctly finds that neither rulemaking made the proper findings to support EPA's asserted result.

1. The 2012 OOOO rulemaking did not follow the procedures required to properly add transmission and storage emission sources

In the 2011 proposed subpart OOOO rulemaking, EPA appeared to simultaneously declare that (1) the Crude Oil and Natural Gas Production source category has always included "all operations in this industry (*i.e.*, production, processing, *transmission, storage and distribution*)," and (2) that it was modifying the source category to include, for the first time, transmission, storage, and distribution emission sources. 76 Fed. Reg. 52,738, 52,745 (Aug. 23, 2011) (emphasis added). To justify its amendment of the source category, EPA paraphrased the Administrator's statutory authority to list a source category that may be subject to the NSPS program if "in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b)(1)(A).

Yet, the proposed rulemaking provided no rationale explaining how or why VOC emissions from the newly added transmission, storage, and distribution emission sources caused or contributed to air pollution that endangered public health or welfare. This should, at a minimum, have identified the equipment emitting VOCs, estimates of VOC emissions from transmission, storage, and distribution sources, and how these emissions caused or contributed to an endangerment. Without this information, the proposed rulemaking deprived the owners and operators of those emission sources of the ability to comment on EPA's rationale for expanding the source category.

In any case, the 2012 final rulemaking took a different course. There, EPA asserted that it was not revising the source category but merely interpreting the original listing and the 1985 subparts as supporting a broad interpretation of the category. 77 Fed. Reg. 49,490, 49,514 (Aug. 16, 2012). Yet, as EPA appropriately recognizes here in the Proposed Rule, the text of the 1985 rulemaking plainly excluded transmission, storage, and distribution sources. EPA, meanwhile, provided no explanation in the 2012 Rule as to how it reached this interpretation. Even a "broad" listing must reasonably encompass the sources to be regulated, in this case, transmission and storage, which it clearly did not. EPA cannot unilaterally add emission sources to a source category merely by fiat.

2. The 2016 rulemaking likewise did not correctly follow the procedures required to add transmission and storage emission sources to the Crude Oil and Natural Gas Production source category

The 2016 Rule likewise failed to follow the proper procedures to include transmission and storage emission sources in the source category. In the final 2016 rulemaking, EPA reiterated its assertion that transmission, storage, and distribution emission sources were included in the original Crude Oil and Natural Gas Production source category (asserting that "no revision is required"), but, then "as an alternative," EPA also claimed that it was revising the source category to include these emission sources. 81 Fed. Reg. 35,824, 35,833 (June 3, 2016). As the proposed rule correctly finds, EPA's approach in the 2016 Rule lacks merit.

For one, EPA correctly recognizes now that it cannot simply rewrite the source category under the guise of the claim that the 1979 source category "broadly covered" or "broadly included" every possible emission source associated with natural gas. 81 Fed. Reg. at 35,832-33. It was incorrect for EPA to find transmission and storage emission sources within the 1979 source category when there was no reasonable basis for that finding.

Moreover, the Agency's Proposed Rule properly appreciates that EPA's attempt to expand the source category was equally infirm. The agency's authority to revise the scope of a source category must be exercised within reasonable boundaries and cannot be used in such a way that would unreasonably expand an existing source category to cover a new set of emission sources that are sufficiently unrelated to the existing sources. If they are sufficiently unrelated, the Administrator must find, based on his "judgment," that transmission and storage emission sources *on their own* cause or contribute significantly to air pollution that may reasonably be anticipated

to endanger public health or welfare. The Administrator failed to do this.[4] Although the 2016 Rule included a lengthy discussion of the public health and welfare effects of greenhouse gas, VOC, and sulfur dioxide emissions, 81 Fed. Reg. at 35,833-840, the Agency provided no information regarding air pollutant emissions from the newly-added transmission, storage, and distribution emission sources.

Hence, GPA Midstream agrees with EPA's proposal to find that the prior rules' interpretation that transmission, storage, and distribution emission sources were included in the 1979 source category definition was incorrect. 84 Fed. Reg. at 50,255. Therefore, GPA Midstream supports EPA's proposal to determine these emission sources are distinct from those included in the Crude Oil and Natural Gas Production source category and that its prior interpretations to the contrary in the 2012 and 2016 rulemakings were in error.

II. GPA Midstream Agrees that Methane Requirements for Production and Processing Facilities Are Redundant

GPA Midstream agrees with EPA that the methane control requirements from NSPS Subpart OOOOa are entirely redundant and removing methane control requirements while leaving the VOC requirements in place will not affect the amount of methane emissions reductions currently achieved in the production and processing segments. 84 Fed. Reg. at 50,246. The production and processing facility controls required by the rule for VOC and methane emissions are the same. Without establishing that methane regulations result in emission reductions that would not otherwise occur without VOC emission controls, there can be no benefit to justify the regulations' costs. Hence, there is no rational basis for establishing a separate standard for methane when VOC emission controls already reduce methane emissions as a co-benefit.

GPA Midstream further agrees that there is precedent for EPA to decline to regulate where additional regulations would not result in meaningful emission reductions. The proposed rulemaking cited *National Lime Association v. EPA*, 627 F.2d 416 (D.C. Cir. 1980) as an example of where EPA declined to regulate sulfur dioxide emissions because the particulate matter emission limitations for lime plants already effectively controlled sulfur dioxide emissions. There are other cases where courts have upheld EPA's decision to decline issuing redundant or unnecessary regulations absent a specific statutory command to do so.

For instance, in *Idaho Conservation League v. Wheeler*, 930 F.3d 494, 504-5 (D.C. Cir. 2019), the D.C. Circuit denied a petition for review claiming that EPA was required to "issue redundant financial responsibility requirements" for the hardrock mining industry. The court upheld EPA's decision to decline issuing such regulations "on the ground that requirements already mandated under other federal and state regulations provide an adequate guarantee of financial accountability." *Id.* at 504.

[4] Further, EPA's "alternative" rationale was not raised in the proposed rulemaking, precluding informed public comment on whether emissions from transmission, storage, and distribution sources contribute significantly to an endangerment to public health or welfare.

In *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979) the same court espoused a relatively broad doctrine where, "[u]nless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value." Thus, declining to regulate is justified where "the agency concludes that the acknowledged benefits are exceeded by the costs." *Id.* at 361. Several courts have relied on this principle that regulation is not necessary, absent a specific statutory command, where it would not provide any tangible benefits. *See Connecticut v. EPA*, 696 F.2d 147, 165 (2d Cir. 1982) (upholding EPA refusal to impose additional requirements on neighboring state emissions because the benefits would "be so insignificant as to be fairly described as minimal"); *Envt'l Defense Fund v. EPA*, 82 F.3d 451 (D.C. Cir. 1996) (upholding the exemption of certain government actions from the Clean Air Act's general conformity provision at 42 U.S.C. § 7506); *Ober v. Whitman*, 243 F.3d 1190 (9th Cir. 2001) (upholding EPA's refusal to require particulate matter emission controls for *de minimis* sources). Here, no such "rigid" command to regulate exists. Section 111(b)(1)(A) leaves it to the Administrator's "judgment" as to whether additional regulation would provide a benefit that could relieve any purported endangerment to public health or welfare.

III. EPA Should Limit its Initial Action to its Primary or Alternative Proposals and Defer Action On the Issue of Whether a Pollutant-Specific "Significant Contribution Finding" is Required When Addressing a New Pollutant for a Separate Rulemaking

EPA should defer any action on the questions regarding the standard for a "significant contribution finding." Given that EPA's primary proposal is to eliminate the redundant methane regulations in the 2016 Rule, which GPA Midstream supports, there is no need at this time to reach the issue of how or when EPA makes a "significant contribution finding." EPA previously made a "significant contribution finding" with respect to VOC emissions from the Crude Oil and Natural Gas Production source category. Thus, nothing more is required to ease unnecessary regulatory burdens on sources within the source category.

GPA Midstream recommends that EPA defer any action on the question of significant contribution findings by instituting a stand-alone proposed rulemaking. Doing so will ensure broader industry input from the dozens of different types of emission sources regulated under 40 C.F.R., Part 60 that would also be affected by any final action regarding significant contribution findings. Further, uncoupling the question of significant contribution findings from this proposed rulemaking will expedite EPA's process for finalizing the rule, narrow its scope, and reduce the complexity of any litigation surrounding a final rule.

IV. If EPA Addresses Significant Contribution Findings in this Rulemaking, then GPA Midstream Urges EPA to Find That the Agency Must Make a Pollutant-Specific Significant Contribution Finding Before Regulating a New Pollutant

Although GPA Midstream believes that it is unnecessary to address the question of when and how to make a significant contribution finding, should EPA address the issue in the final rule, it should find that Section 111(b)'s plain language requires EPA to make a pollutant-specific significant contribution finding as a condition to the regulation of additional pollutants. Further, if EPA believes that Section 111(b)(1)(A) is ambiguous – which it is not – it should determine that requiring a pollutant-specific significant contribution finding is a far more reasonable interpretation than a "rational basis" test.

A. Clean Air Act Section 111(b)(1)(A) requires a pollutant-specific significant contribution finding

Section 111(b)(1)(A) limits EPA's authority under the NSPS program to the regulation of significant "air pollution" emissions that "may reasonably be anticipated to endanger public health and welfare." Thus, the statutory language conditions the authority for the Administrator to regulate on findings regarding the air pollutant emissions from a source category, not the source category itself. This language, and the overall framework of the statute, does not indicate that Congress intended for EPA to make an initial finding regarding one pollutant and then proceed to regulate other pollutants that were never evaluated under Section 111(b)(1)(A) as significantly causing or contributing to an endangerment.

Any other reading of Section 111(b), such as EPA's previous "rational basis" interpretation, cannot be sustained by the statute's text. Nothing in Section 111(b)(1) supports such a rational basis determination, which works to avoid the condition that Congress established for regulation – a pollutant-specific significant contribution finding. Without satisfying this condition, EPA has no authority to promulgate NSPS regulations. *See, e.g.*, *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 213-14 (1973) (agencies only have those powers granted to them by Congress); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374-75 (1986) ("An agency may not confer power upon itself. To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress.").

Yet, the 2016 Rule purported to use a "rational basis" standard found nowhere in the statute. 81 Fed. Reg. at 35,842. EPA's purported support for such a standard, *National Lime Association v. EPA*, 627 F.2d 416, 426 & n.27 (D.C. Cir. 1980), did not, in fact, create or endorse such a standard for NSPS regulations. In *National Lime Association*, the court merely held that a substantial body of record evidence provided a "rational basis" to support the Administrator's finding that "significant production of particulate emissions … cause or contribute to air pollution (which may reasonably be anticipated to endanger public health or welfare)." 627 F.2d at 426 & n.27. Any fair reading of the court's footnote shows only that it determined that EPA had the evidence needed for a significant contribution finding; it *did not* create some "rational basis" standard for NSPS regulation as an alternative to a pollutant-specific significant contribution finding.

Without enforcing Section 111(b)(1)(A)'s requirement for a pollutant-specific significant contribution finding, EPA could subject source categories to costly and inefficient NSPS regulations even where the source categories' emissions do not significantly endanger public health or welfare. Indeed, without a pollutant-specific finding, EPA could impose new regulations on sources without any serious study or analysis. *See Ethyl Corp. v. EPA*, 541 F.2d 1, 6 (D.C. Cir. 1976) (describing "rational basis" review of agency decision making as deferential and requiring "little or no evidence at all"). It is irrational to believe that Congress gave EPA *carte blanche* to regulate any pollutant it chooses for any reason it chooses despite the statute's requirement for a pollutant-specific significant contribution finding.[5]

B. Requiring a pollutant-specific significant contribution finding is a more reasonable interpretation than a rational basis test.

Even if Section 111(b)(1)(A) were deemed ambiguous, which it is not, it would be entirely reasonable for EPA to find that the statute requires a pollutant specific-significant contribution finding. EPA's "rational basis" test, the only alternative proposed by EPA, is not a reasonable alternative interpretation. It is found nowhere in Section 111(b)(1)(A) and nothing in the structure of the Clean Air Act appears to warrant its use. Such an interpretation would substitute the text's need for a "significant contribution finding" for a test providing no criteria by which to judge or constrain a determination to regulate. This would allow EPA to impose potentially costly, disruptive, and inefficient regulations on an industry without serious study or analysis and with only the slightest assurances that EPA has some rational basis to do so. In order to provide regulated industry with a greater degree of certainty and objective understanding for the bases of regulation, EPA should find that requiring a pollutant-specific significant contribution finding is the far more reasonable interpretation.

V. Assuming a Pollutant-Specific Finding is Required, the 2016 OOOOa Rulemaking Lacked the Necessary Significant Contribution Finding to Support the Regulation of Methane

Should EPA determine that a pollutant-specific significant contribution finding should have been made as a prerequisite to imposing NSPS regulations for methane emissions, the 2016 Rule failed to provide one. To satisfy the purported rational basis for finalizing the 2016 Rule, EPA relied "in part" upon the 2009 Endangerment Finding, issued under CAA § 202 for greenhouse gas emissions from light duty vehicles. 81 Fed. Reg. at 35,877. This cannot satisfy any requirement for a pollutant-specific significant contribution finding.

To begin, the 2009 Endangerment Finding dealt with an entirely different section of the Clean Air Act – Section 202(a). Although generally similar, Section 202(a) authorizes the Administrator to regulate air pollutants from new motor vehicles or new motor vehicle engines when those pollutants, "in his judgment, cause, or contribute to, air pollution which may

[5] Otherwise, without a pollutant specific finding, EPA could regulate a pollutant (like GHGs) that was not even a pollutant under the CAA at the time the source category was established. GHGs were not recognized as a pollutant until Massachusetts v. EPA, 549 U.S. 497 (2007), which is long after EPA's initial 1979 source category listing for the oil and natural gas sector.

reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1). The key difference with Section 111(b)(1)(A), however, is that there is a different standard. Section 111(b)(1)(A) requires a "significant" contribution while Section 202(a) does not, and thus, is a lower standard. EPA already acknowledged that the "contribute" standard under Section 202(b) is different than the "significant contribution" standard of Section 111(b). 74 Fed. Reg. 66,496, 66,506 (Dec. 15, 2009). Yet, the 2016 Rule did not make a significance determination for methane emissions from the Crude Oil and Natural Gas Production source category or espouse any general criteria for significance. The sole analysis constituted a statement that oil and natural gas production, processing, transmission, and storage sources constitute three percent of total U.S. greenhouse gas emissions. 80 Fed. Reg. at 56,608. It is not clear why three percent is "significant" and EPA provided no criteria for making this determination. Thus, the determination was arbitrary and capricious.

Further, the 2009 Endangerment Finding deals with vehicles, not the Crude Oil and Natural Gas Production source category. The 2009 Endangerment Finding provides no information as to whether the "air pollution" from the source category "causes, or contributes significantly" to an endangerment of public health or welfare. It would be arbitrary and capricious to claim that a significant contribution finding for one source category applies to another source category without some explanation as to their similarities. The 2016 Rule went even further by determining, without any explanation, that the nature and type of emissions from automobiles can be applied to a Crude Oil and Natural Gas Production source category.

Lastly, the 2009 Endangerment Finding dealt with "greenhouse gases," a "mix of six long-lived and directly-emitted greenhouse gases," including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride." 74 Fed. Reg. at 66,497. Carbon dioxide is the primary "driver of climate change," *id.* at 66,519, not methane. In fact, the 2009 Endangerment Finding found no endangerment to public health or welfare from methane. This cannot substitute for a pollutant-specific significant contribution finding for methane emissions from the Crude Oil and Natural Gas Production source category.

A significant contribution finding under Section 111(b)(1)(A) would require EPA to determine that (1) methane emissions (2) from the Crude Oil and Natural Gas Production source category (3) contribute significantly (4) to an endangerment of public health or welfare. The Section 202(b) endangerment finding makes none of these findings for purposes of the NSPS.

VI. If EPA Addresses Significant Contribution Findings in this Rulemaking, then it Should Develop Appropriate Criteria

EPA has never established definitive criteria for a significant contribution finding. The absence of criteria has led EPA to conflate Section 111(b)'s standard for a source that "causes, or contributes significantly to, air pollution" with Section 202(a)'s "endanger public health or welfare" standard for mobile sources. *See* 81 Fed. Reg. 35,841 (citing 2009 Endangerment Finding for mobile source greenhouse gases emissions as an attempted justification for regulating methane emissions from the Crude Oil and Natural Gas Production sector). Indeed, the 2016 final rule demonstrates why a Title II endangerment finding cannot be used interchangeably with Section 111(b) and that EPA should establish separate criteria under the NSPS program. Any "significant

contribution" determination under Section 111(b) should provide objective criteria to determine that air pollutant emissions from the stationary source category under review "significantly" contributes to an endangerment to public health or welfare, not merely emits a certain amount or proportion of emissions.

A. The statutory term "significantly" must be given meaning

Stationary source categories under Section 111(b) must contribute "significantly" to the endangerment of the public health or welfare. The term "significantly" is not found in Section 202(a) and should not be read out of Section 111(b). A "significant" contribution is best defined as something that is "[m]omentous" or "important." Webster's II, New Riverside University Dictionary (1984) at 1,083. By adding the term "significant," Congress intended Section 111(b) to involve a heightened standard when compared to Section 202(a). To date, EPA has never acknowledged or described this heightened standard. The 2016 final rulemaking's use of the 2009 Endangerment Finding issued under Title II for mobile source greenhouse gas emissions failed to recognize Section 111(b)'s heightened standard.

B. EPA should analyze emissions from the stationary source category, not the general effects of the air pollutant at issue

Air pollutant emissions *from those stationary sources* must contribute significantly to the endangerment. *See* 42 U.S.C. § 7411(b)(1)(A) (the Administrator must conclude that "a category of [stationary] sources … causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare"). Merely stating that a specific *type* of pollutant can create an endangerment, regardless of whether the stationary source category emits that pollutant in a particular amount or nature, as the 2016 rulemaking appeared to do, is not enough under Section 111(b).

C. Amounts or proportions of emissions must be tied to the purported endangerment

There must be some objective criteria for making a rational determination as to what is "significant" or not. *See Mississippi v. EPA*, 744 F.3d 1334, 1346 (D.C. Cir. 2013) (decisions left to the Administrator's "judgment" must be "rational"). Simply referencing an estimated annual volume of emissions from a source category and stating that the category "is one of the largest emitters" of a pollutant, 81 Fed. Reg. at 35,840, is not enough to rationally find that the source category "contributes significantly" to an endangerment under Section 111(b).[6] A source category may be among the largest sources of a particular pollutant yet the pollutant emissions may still not contribute significantly to a particular public health or welfare endangerment.

[6] To the extent that EPA does consider the volume of emissions, it should ensure that the total emissions are calculated *after* considering existing pollution controls required for that source category. That includes controls imposed by federal, state or local laws, including the controls already imposed for another pollutant as is the case here for VOCs. It would not be rational to evaluate a source category's potential contribution to an endangerment and impose new regulations based on the counterfactual scenario of completely uncontrolled emissions.

EPA's approach under the NSPS for fossil fuel-fired electricity generating units ("EGUs") is an example of how it previously took the wrong approach. There, it claimed that, since fossil fuel-fired EGUs emit almost one third of all U.S. greenhouse gas emissions, then "it is not necessary for the EPA to decide whether it must identify a specific threshold for the *amount of emissions* from a source category that constitutes a significant contribution" as "[u]nder any reasonable threshold or definition, the emissions from EGUs are a significant contribution." 79 Fed. Reg. 1,430, 1,456 (Jan. 8, 2014) (emphasis added). But a volume of emissions standing alone cannot satisfy the statutory criteria. There must be some explanation of how that volume of emissions contributes significantly to an endangerment. EPA should not issue a new NSPS rule to control emissions from a source category without first detailing how reducing those emissions would reduce the endangerment EPA has found to be at issue.

D. EPA's 1979 source category listing can provide guidance

The 1979 source category listing did not provide any methodology for making a significant contribution finding. It did, however, provide a methodology for prioritizing regulations for potential source categories, and this methodology may still be instructive. EPA considered:

- The quantity of emissions from each source category;
- The extent to which each pollutant endangers public health or welfare;
- The mobility and competitive nature of each stationary source category, "e.g., the capability of a new or existing source to locate in areas with less stringent air pollution control regulations;" and
- Sources with the greatest growth rates and emission reduction potential were given priority while "sources with limited choice of location, low growth and small emission reduction potential were low" on the priority list. 44 Fed. Reg. at 49,222.

Sources that were not likely to see significant emission reductions from an NSPS were given low priority or not listed at all. 43 Fed. Reg. at 38,872, 38,873 (Aug. 31, 1978) ("relative priority" assigned "to pollutants based upon the potential impact of NSPS"); *id.* ("If the screening study indicates that an NSPS would have little or no effect on emissions, or than an NSPS would be impractical, a source category can be removed from the list…."). Further, sources emitting non-criteria pollutants were given a lower priority. *Id.*

Technical Issues

VII. EPA Should Clarify That Gathering and Boosting Compressor Stations and Pipelines Are Included in the Processing Segment

Section III.A.1 of the preamble to the Proposed Rule describes the oil and natural gas industry. Aspects of this description are inconsistent with how operators typically characterize the segments of the industry. Specifically, the description of gathering and boosting operations in the preamble places some aspects of gathering and boosting within production ("The production segment also includes the low pressure, small diameter, *gathering pipelines* and related components that collect and transport the oil, natural gas, and other materials and wastes from the wells to the refineries or natural gas processing plants"), while placing other aspects of gathering and boosting within natural gas processing ("Typically, processing of natural gas begins in the field and continues as the gas is moved from the field through *gathering and boosting stations* to natural gas processing plants, where the complete processing of natural gas takes place"). 84 Fed. Reg. at 50,248.

While GPA Midstream does not seek changes to the Proposed Rule on this point, it offers the following clarification. Gathering and boosting begins after the well site and typically ends at the natural gas processing facility. Gathering and boosting operations includes gathering pipelines, the associated equipment along those pipelines and gathering and boosting compressor stations. Within industry, gathering and boosting pipelines are not considered to be part of the production segment. Rather, production ends at the point of custody transfer from the producer to the gathering company; this point of custody transfer is typically located at the well site. Gathering and boosting compressor stations compress field gas to move it from the well site through gathering and boosting pipelines to the natural gas processing plant (some areas do not require a processing plant). These compressor stations are distinct from transmission compressor stations which compress residue/dry gas to move it from the natural gas processing plant through transmission pipelines to storage or distribution. Gathering and boosting compressor stations generally operate at lower pressures than transmission compressor stations.

GPA Midstream does not request that EPA create a fifth industry segment for gathering and boosting operations within this rule, as we do not think doing so would materially change the rule or the compliance obligations within these types of operations. However, to the extent that EPA considers gathering and boosting operations to be part of one of the four stated industry segments, GPA Midstream requests EPA categorize gathering and boosting operations within the gas processing industry segment, not production.

VIII. GPA Midstream Requests EPA Recognize CO_2 Emissions Are the Largest Source of Greenhouse Gas Emissions in the Oil and Natural Gas Source Category, Not Methane

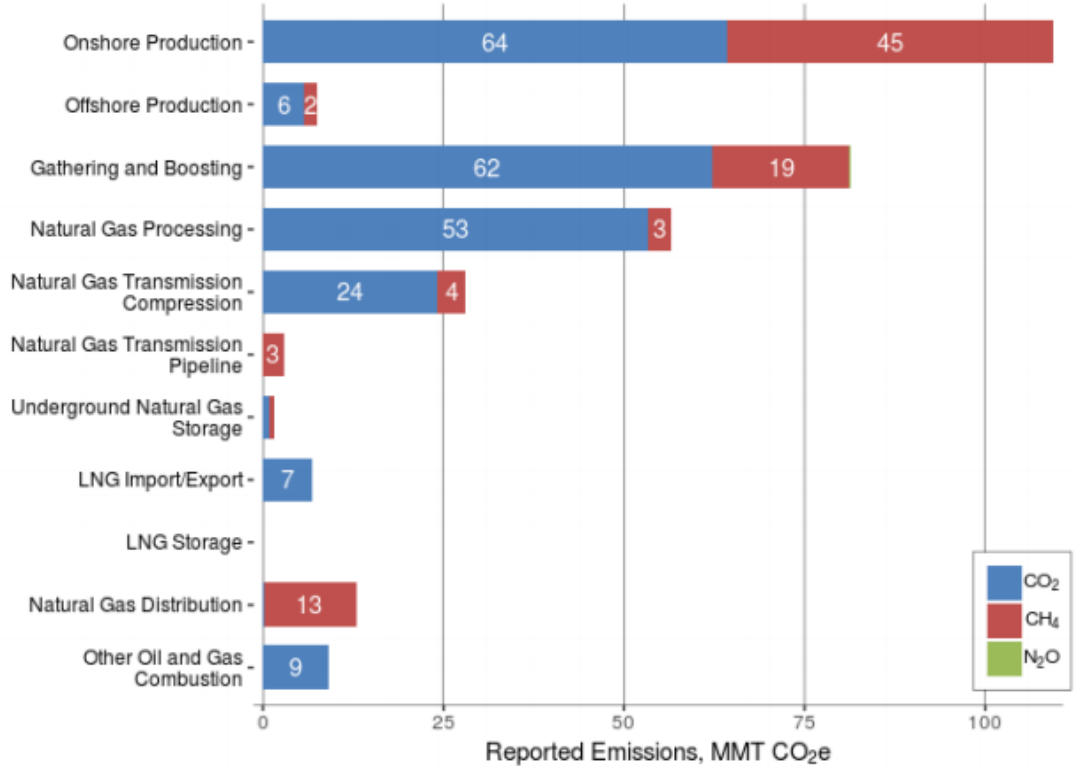
In Section VI. of the preamble for the Proposed Rule, EPA states "…the EPA sometimes referred to the 'air pollutants' as methane, in recognition of the fact that methane is the largest quantity of GHG emitted by the Oil and Natural Gas source category." 84 Fed. Reg. at 50261. This

statement is incorrect. According to the most recent GHGRP Industrial Profile released by EPA[7], CO_2 is the largest quantity of GHG emitted across the entire oil and gas sources category by a fairly wide margin. EPA's 2018 data outlines that 226 MMT CO_2e, or 71.5%, is from CO_2 emissions. Whereas, methane in 2018 only accounts for 28.2% of the total CO_2e emissions from oil and gas at 89 MMT (the remaining 0.3% of emissions were from N_2O). See the figure below from the same 2018 profile report:

Reported Emissions by Greenhouse Gas

Figure 2 presents reported emissions in 2018 by industry segment and greenhouse gas. For all segments combined, carbon dioxide (CO_2) emissions accounted for 226 MMT CO_2e of reported emissions and methane (CH_4) emissions accounted for 89 MMT CO_2e of reported emissions. Nitrous oxide (N_2O) emissions accounted for 0.2 MMT CO_2e of reported emissions.

Figure 2: 2018 Reported Emissions by Greenhouse Gas



Note: Segment totals may not equal sum of individual GHGs due to independent rounding.

Additionally, as shown in the figure above, the gathering and boosting and natural gas processing segments show the majority of GHG emissions are from CO_2, not methane. GPA Midstream requests EPA take this data into account when discussing GHG emissions from the source category and perhaps clarify this point in the final rulemaking.

[7] Found at: https://www.epa.gov/sites/production/files/2019-10/documents/subpart_w_2018_industrial_profile.pdf

IX. GPA Midstream Agrees Existing Sources Will Decline Over Time

GPA Midstream agrees with EPA that it is reasonable to expect the number of existing sources will decline over time due to modification activities (which would make existing sources subject to NSPS) or due to decommissioning activities (which would remove the emission sources altogether).

Additionally, oil and gas production fields where production volumes and throughputs are the highest also generally correspond to areas with the highest new growth, driving an ever-increasing proportion of the sources to become subject to NSPS. Thus, where there are the highest throughputs and potential for emissions, there are also the highest proportions of sources subject to NSPS, either through modification or new construction.

Turnover rates for sources like pneumatic controllers, compressors and storage tanks are highly variable due to a number of factors including climate, operating conditions, build quality, maintenance practices and production growth. As such, it is difficult to provide additional specific data that could accurately represent current or future turnover rates.

X. EPA Should Revise the "Draft Control Cost and Emission Changes under the Proposed Amendments to 40 CFR Part 60, subpart OOOOa Under Executive Order 13783" Document for Consistency with the Proposed Rule

GPA Midstream has reviewed the "Draft Control Cost and Emission Changes under the Proposed Amendments to 40 CFR Part 60, Subpart OOOOa Under Executive Order 13783" document in the docket and has a few comments. On page 4, section 3.1, the document states, "the cells that are crossed out indicate the segments where there are no sources currently regulated." This should instead read, "The cells that are crossed out indicate sources of emissions that do not exist in those segments."

In Table 3-1 on page 5, the heading "Production: G&B" should be changed to Gathering and Boosting or G&B. As described in the preamble of this Proposed Rule and discussed above to clarify, the G&B segment is described as a part of the processing segment. It is confusing to have it labeled here as production and should rather be listed separately to reduce confusion. The processing segment should have the well completions (oil) and well completions (gas) sources marked out as these sources do not exist at processing plants. To reduce confusion, closed vent systems source row should be removed since it is not a source category in the rule but rather a requirement for certain control devices. Lastly, the amine source category for NSPS Subpart OOOOa is not included and should be added.

In Tables 4-2 through 4-7, EPA estimates the impact of the Proposed Rule amendments including the "number of sources subject to 2016 NSPS that would no longer be subject." For Year 2019 (Table 4-2) EPA indicates 1,540 pneumatic controllers which is 5 years (2015-2019) of installing 308 low bleed controllers per year (from Table 4-1). GPA Midstream notes that these low bleed pneumatic controllers are "sunk cost;" that is, the low bleed controllers have already been purchased and installed. Operators are not going to replace existing low bleed controllers with high bleed controllers if the Proposed Rule amendments are promulgated. The count to be

used should be 308 (per Table 4-1) starting the year that these amendments could be finalized (e.g., 2020). The estimated emission increases and cost savings should be adjusted accordingly.

Similarly, for wet seal centrifugal compressors, the capital cost presented in Table 3-2 is also "sunk cost." Thus, the capital cost savings from these rule amendments should only be applied to wet seal compressors going forward from the rule finalization (i.e., not applied to the population of wet seal centrifugal compressors which became subject to the 2016 Rule prior to the finalization of these rule amendments). Annual operating and maintenance cost savings could be applied to all the compressors subject to these requirements; however, GPA Midstream notes that operators may continue to control the wet seal emissions for a variety of reasons, including permit obligations.

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GPA Midstream appreciates the opportunity to submit comments on the Proposed Rule. We look forward to continuing to work with EPA as it continues to refine and improve its approach to address air emissions from the oil and natural gas sector. Thank you for consideration of these comments.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association