May 30, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Strengthening Transparency in Regulatory Science, 83 Fed. Reg. 18,768 (April 30, 2018) (Docket No. EPA-HQ-OA-2018-0259)

Dear Administrator Pruitt,

GPA Midstream Association ("GPA Midstream") appreciates this opportunity to provide comments on the proposed rulemaking entitled "Strengthening Transparency in Regulatory Science" published by the U.S. Environmental Protection Agency ("EPA"). 83 Fed. Reg. 18,768 (April 30, 2018).

GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 100 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 strongly supports the proposed rule's prioritization of transparency in EPA's use of scientific studies for regulatory decisions. The ability to make the data, methodology, and assumptions underlying studies relied upon by EPA regulatory decisions open to the public for verification or criticism is both a fundamental aspect of the scientific method and necessary for reasoned decision making under the Administrative Procedure Act. This is especially true given that courts provide deferential review of agency decisions involving scientific or technical matters. *See Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 103 (1983) ("When examining this kind of scientific determination, as opposed to simple findings of fact, a reviewing court must generally be at its most deferential."); *Nat'l Wildlife Fed'n v. EPA*, 286 F.2d 554, 560 (D.C. Cir. 2002) ("particular deference is given by the court to an agency with regard to scientific matters in its area of technical expertise.").

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Unfortunately, despite the proliferation of declarations, mandates, and orders over the past twenty years on the need for federal agencies to use high quality scientific studies and data in a transparent way,[1] EPA has sometimes failed to meet that standard. In order to provide greater consistency to the use of high quality scientific studies and data, GPA Midstream urges the broadest possible application to EPA regulatory decisions while still respecting personal privacy, confidential business information, and national security interests. Although full implementation of EPA's transparency requirements may need to be phased in over time, GPA Midstream does not believe that these requirements should only be limited to dose-response data and modeling. Instead, EPA should follow these requirements to the fullest extent practicable for all rulemaking decisions that rely on scientific or economic information as a basis for EPA's decision.

GPA Midstream also strongly supports proposed 40 C.F.R. § 30.3, stating that EPA's transparency requirements will apply "regardless of the source of funding or identity of the party conducting the regulatory science." Too often, studies funded in whole or in part by industry are dismissed or given diminished credibility solely due to the source of the funding. Although GPA Midstream recognizes the common presumption that the funding source may influence a study's results, these presumptions are rarely applied to studies performed or funded by non-governmental organizations, academic institutions, or government agencies even though each of them may exert a significant influence over study results as well. Further, industry may be the only party interested in funding the study of certain aspects of environmental or public health issues, allowing for a more robust scientific review of these issues than if the matter were left solely to the decision of others. Of course, the quality of scientific studies stand or fall on their underlying data, methodologies, and assumptions. A transparent and open process that allows for outside validation or criticism of studies will reveal the quality of those studies regardless of the funding source.

Lastly, GPA Midstream requests that EPA clarify the use of peer review in proposed 40 C.F.R. § 30.7. This states that "EPA shall conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein." That OMB bulletin states that, for more important work, "independent" peer review should involve "[r]eviewers" that "are generally not employed by the agency or office producing the document. As the National Academy of Sciences has stated, 'external experts often can be more open, frank, and challenging to the status quo than internal reviewers, who may feel

[1] *See*, *e.g.*, Pub. L. No. 106-553 (Information Quality Act) (2001); White House Memorandum for the Heads of Executive Departments and Agencies (Mar. 9, 2009) ("The public must be able to trust the science and scientific process informing public policy decisions."); OMB, Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information (2002); Executive Order No. 13563, 76 Fed. Reg. 3,821 (Jan. 21, 2011) (regulatory decisions "must be based on the best available science."); Executive Order No. 13777, 82 Fed. Reg. 12,285 (Mar. 1, 2017) (agencies should identify regulations that rely "on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standards for reproducibility).

constrained by organizational concerns.'" Citing NRC, Peer Review in Environmental Technology Development Programs: The Department of Energy's Office of Science and Technology, Nat'l Academy Press (1998) at 3. EPA's own guidelines similarly note that "[f]or those work products that are intended to support the most important decisions or that have special importance in their own right, external peer review is the procedure of choice." EPA, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency (Oct. 2002) at § 4.2. Given the credibility bestowed by both the courts and the public upon the studies that are "peer reviewed," EPA should clarify the conditions under which it will use truly independent external peer reviewers. This should include some parameters on how external peer reviewers are selected, such as taking care to ensure that reviewers are not those working under, or applying for, EPA grants or otherwise have long-standing relationships with EPA, such as former EPA officials now serving in academia. GPA Midstream believes that independent external peer review should be used for all significant regulatory actions as that term is defined under Executive Order 12,866. Avoiding internal reviews by other EPA officials for significant regulatory actions will help restore public trust in the quality of information relied upon by EPA.

GPA Midstream appreciates the opportunity to submit these comments and is standing by to answer any questions that EPA may have.

Respectfully submitted,

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