UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Environmental Reviews of NGA Project Applications	)	**Docket No. PL26-3-000**

COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE AND GPA MIDSTREAM ASSOCIATION

I. Introduction

The American Petroleum Institute ("API") and GPA Midstream Association (collectively, the "Associations") respectfully hereby submit these comments in response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") Draft Policy Statement on Efficient Environmental Reviews of Natural Gas Project Applications ("Draft Policy Statement"),[1] which proposes revisions to the Commission's review of operational air emissions and associated air quality effects of proposed natural gas projects under the Commission's Natural Gas Act ("NGA") jurisdiction.[2]

The Draft Policy Statement proposes that the Commission will no longer request air dispersion modeling from applicants under NGA sections 3 and 7 or rely on modeled comparisons to the National Ambient Air Quality Standards ("NAAQS") to determine whether operational air emissions are "significant" under the National Environmental Policy Act

[1] *Draft Policy Statement on Efficient Environmental Reviews of Natural Gas Project Applications*, Environmental Review of Natural Gas Act Applications, 197 FERC ¶ 61,037, Docket No. PL26-3-000 (October 15, 2026) ("Draft Policy Statement").

[2] 15 U.S.C. §§ 717 *et seq*.

("NEPA"), and will instead rely on equipment-specific emission data, Clean Air Act ("CAA") permit requirements, and the information already required by Commission regulations.[3]

The Associations support the Commission's longstanding goal of facilitating the construction of natural gas infrastructure needed to meet domestic energy demand and recognizes the important role that the Draft Policy Statement will play in aligning the Commission's NEPA practice with its statutory charge, Supreme Court precedent, and the CAA's assignment of air permitting authority to the Environmental Protection Agency ("EPA") and the states. API is a nationwide, non-profit trade association that represents all facets of the natural gas and oil industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API's more than 600 member companies include large integrated companies, as well as exploration and production, refining, marketing, pipeline and marine businesses, and service and supply firms. API was formed in 1919 as a standards-setting organization, and API has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability. API and its members are committed to the safe transportation of natural gas, crude oil and petroleum products, and support sound science and risk-based regulations, legislation, and industry practices that have demonstrated safety benefits.

GPA Midstream is composed of approximately 50 corporate members that directly employ over 57,000 employees that are engaged in the gathering, transportation, processing, treating, storage and marketing of natural gas, natural gas liquids, crude oil, and refined products, commonly referred to in the industry as "midstream activities." In 2024, GPA Midstream members operated more than 500,000 miles of pipelines, gathered nearly 91 Bcf/d of natural gas, and operated more than 340 natural gas processing facilities. GPA Midstream's members are an

[3] Draft Policy Statement at PP 5, 35-38.

invisible link between raw natural gas and crude oil produced at the wellhead and the distribution of products to consumers for heating, electricity production, transportation, steelmaking, fertilizer production, plastics, high-tech devices, cosmetics, pharmaceuticals, and much more.

The Associations support the Commission's proposal to discontinue routine air dispersion modeling and to adopt the streamlined review described in Part II.B of the Draft Policy Statement. The proposal represents the kind of agency-initiated recalibration of NEPA review called for in *Seven County Infrastructure Coalition v. Eagle County*,[4] and is a common-sense approach to eliminate an unnecessary duplicative review process without altering any emission limits or permit obligations while increasing the legal durability of Commission orders. Nor will it leave local air quality effects unexamined as the substantive examination and control of air emissions is, and will remain, the work of EPA and the state air agencies as dictated by the CAA.

II. Background

The Commission's regulations currently require applicants to describe existing air quality, the project's effect on air quality and compliance with applicable requirements, and proposed mitigation measures.[5] They do not require air dispersion modeling. Modeling entered Commission practice through staff's 2017 *Guidance Manual* and subsequent data requests. The Commission came to compare modeled concentrations to the NAAQS established by the EPA to decide whether operational emissions were "significant" enough to require an environmental impact statement ("EIS") rather than an environmental assessment ("EA").[6]

[4] 605 U.S. 168 (2025) ("*Seven County*").
[5] 18 C.F.R. § 380.12(k)(1), (3), (5) (2025).
[6] Draft Policy Statement at PP 14-15, 37; FERC Office of Energy Projects, *Guidance Manual for Environmental Report Preparation for Applications Filed Under the Natural Gas Act*, Vol. 1, at 4-121 to 4-126 (Feb. 2017).

Three developments representing the most significant changes to NEPA law since the passing of the statue in 1970 frame the proposal. Over the last 50 years of NEPA implementation the size, scope, time, and cost of NEPA review has snowballed with infrastructure projects. In 2020, the White House Counsel on Environmental Quality ("CEQ") found that the average final EIS was over 650 pages with at least 25% being over 748 pages and taking 4.5 years on average to complete.[7] The Government Accountability Office meanwhile found that by 2012 the average cost was over $1.4 million with that number skyrocketing until Congress took action in 2023.[8]

In 2023, Congress limited EAs to 75 pages and one year and EISs to 150 pages and two years, and relieved agencies of new technical research that is not essential to a reasoned alternative.[9] In May 2025, the Supreme Court in *Seven County* reaffirmed and clarified that NEPA is a purely procedural statute. Thus, the Court reasoned, courts owe agencies substantial deference on the depth and breadth of NEPA review, and that a "course correction" regarding agency NEPA review was warranted.[10] Further, in January 2026, the CEQ rescinded its NEPA regulations, returning this authority to individual agencies.[11] The Draft Policy Statement is directly in line with these developments.

III. The Draft Policy Statement Furthers the Spirit of the Supreme Court in *Seven County*

[7] COUNCIL ON ENVTL. QUALITY, FACT SHEET: CEQ REPORT ON LENGTH OF ENVIRONMENTAL IMPACT STATEMENTS (2013-2018) (2020) (available at https://nepa.gov/sites/default/files/documents/CEQ_EIS_Length_Fact_Sheet_2020-6-12.pdf).

[8] GOV'T ACCOUNTABILITY OFF., NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES GAO-14-369 (2014) (available at https://www.gao.gov/products/gao-14-369).

[9] 42 U.S.C. §§ 4336(b)(3), 4336a(e), (g).

[10] *Seven County*, 605 U.S. at 177, 180, 182-84.

[11] Removal of National Environmental Policy Act Implementing Regulations, 91 Fed. Reg. 618 (Jan. 8, 2026); *see* Draft Policy Statement, Swett, Chairman, concurring, at P 6 n.24 ("Swett Concurrence")..

Seven County identified the broader problem stemming throughout agency review of large infrastructure projects that the Draft Policy Statement seeks to address. The Court observed that "overly intrusive (and unpredictable)" judicial review had "caused litigation-averse agencies to take ever more time and to prepare ever longer" NEPA documents, transforming NEPA "from a modest procedural requirement" into a source of delay for "even those projects that otherwise comply with all relevant environmental laws."[12] The Commission's modeling practice developed by that mechanism: a staff recommendation became a de facto requirement, and each increment of analysis became a new baseline and the target of the next challenge.[13]

Seven County also prescribed the remedy. Agencies decide the "depth and breadth" of their inquiry and the "length, content, and level of detail" of the resulting document, and those decisions turn on "the usefulness of any new potential information to the decisionmaking process."[14] Because a reviewing court polices only whether an agency did too little, not too much, the correction can occur only if agencies reassess their own practices.[15] The Draft Policy Statement applies that standard to one category of information and finds, on the Commission's own record, that dispersion modeling has never caused the Commission to deny an application under Sections 3 or 7 of the NGA, has rarely produced a post-certification condition, and adds nothing to the information already gathered as part of CAA compliance.[16] That finding follows from NEPA's "rule of reason:" NEPA does not require a detailed study of effects an agency lacks authority to act on,[17] and Congress placed air pollution control with EPA and the states under EPA oversight, not with a primarily economic regulator whose environmental role is

[12] *Seven County*, 605 U.S. at 183-84.
[13] Draft Policy Statement at PP 15, 30.
[14] *Seven County*, 605 U.S. at 182-83 (quoting *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004)).
[15] See *id.* at 186 n.5; Swett Concurrence at P 6.
[16] Draft Policy Statement at PP 26, 28.
[17] *Pub. Citizen*, 541 U.S. at 767-70; *Seven County*, 605 U.S. at 187-88.

subsidiary.[18] The Courts have consistently recognized that many of EPA's procedures for environmental reviews under its enabling legislation, and particularly the CAA, are functionally equivalent to the NEPA process and therefore should be exempt to avoid repetitious analyses.[19] Agreeing with the Courts functional equivalence doctrine, Congress in a rare showing of support codified the doctrine's application to the CAA into law exempting all EPA's actions under the CAA from NEPA altogether, because requiring NEPA procedures on top of the CAA's already significantly more comprehensive requirements would be redundant and unnecessary.[20]

The Commission will continue to quantify emissions by pollutant, describe existing air quality and nearby sources, identify applicable permits and controls, and consider public comment.[21] What changes is the significance determination, and *Seven County* places that choice within agency discretion: agencies "determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information," and courts "must be at their most deferential" when reviewing "what qualifies as significant."[22] The D.C. Circuit has since confirmed that "the era of searching NEPA review is over."[23]

IV. The Draft Policy Statement Will Bolster the Legal Durability of Future FERC Orders

[18] 42 U.S.C. §§ 7401(a)(3), 7410, 7506(c); *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669-70 (1976).

[19] *Pacific Legal Foundation v. Cecil B. Andrus*, 657 F.2d 829 (6th Cir. 1981) ("Thus, the Clean Air Act serves the purposes of NEPA and filing an impact statement is not required."); *see also State of Wyoming v. Hathaway*, 525 F.2d 66, 71-72 (10th Cir. 1975), *cert. denied*, 426 U.S. 906 (1976); *Indiana & Michigan Electric Co. v. EPA*, 509 F.2d 839, 843 (7th Cir. 1975); *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 431 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974); *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 384-85 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974); *Appalachian Power Co. v. EPA*, 477 F.2d 495, 508 (4th Cir. 1973); *Getty Oil Co. (Eastern Operations) v. Ruckelshaus*, 467 F.2d 349, 359 (3d Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973).

[20] *See* 15 U.S.C. § 793(c)(1); 40 C.F.R. § 6.101(b).

[21] Draft Policy Statement at PP 35, 39; 18 C.F.R. § 380.12(k).

[22] *Seven County*, 605 U.S. at 181-82 (internal quotation marks omitted).

[23] *Sierra Club v. FERC*, 153 F.4th 1295, 1311 (D.C. Cir. 2025)*; see also Save the Sound, Inc. v. FAA*, 183 F.4th 763, 776 (D.C. Cir. 2026); *For a Better Bayou v. FERC*, 188 F.4th 516, 533 (D.C. Cir. 2026).

Air emissions have become "one of the primary foci of litigation by project opponents" because the complexity of modeling "provides ample opportunities for 'flyspecking.'"[24] In *City of Port Isabel v. FERC*, the D.C. Circuit vacated the reauthorizations of two LNG terminals roughly eight years after the applications were filed, in part because the Commission had excluded data from one ambient monitor in favor of another and had relied on an updated cumulative model submitted after the comment period closed.[25] In *Healthy Gulf v. FERC*, the court remanded a FERC authorization over the use of a significant impact level in cumulative nitrogen dioxide modeling.[26] Neither case turned on the quantity of emissions; each turned on a contestable modeling input, and each such input is a potential ground for appeal. A study of 355 major energy and transportation projects found that half of the pipeline projects in the sample were litigated and that 89 percent of litigated projects involved a NEPA claim.[27]

The proposed approach rests on firmer ground. Courts have upheld agency reliance on CAA compliance to conclude that air effects are not significant for nearly four decades,[28] the Commission has already described compliance with state Prevention of Significant Deterioration (PSD) preconstruction permitting as "a reasonable indication that the project's air emissions will not result in significant effects,"[29] and an agency's "choice among reasonable analytical methodologies is entitled to deference."[30] After *Seven County*, a reviewing court asks only

[24] Draft Policy Statement at P 18.

[25] 111 F.4th 1198, 1214-15 (D.C. Cir. 2024); *see Rio Grande LNG, LLC*, 194 FERC ¶ 61,218, at PP 7-27 (2026) (describing revisions to modeling driven by litigation over model inputs).

[26] 107 F.4th 1033, 1043-44 (D.C. Cir. 2024).

[27] Michael Bennon & Devon Wilson, *NEPA Litigation Over Large Energy and Transport Infrastructure Projects*, 53 ENVTL. L. REP. 10836 (2023).

[28] *Pub. Citizen v. NHTSA*, 848 F.2d 256, 267-68 (D.C. Cir. 1988); *Friends of Animals v. Burgum*, 164 F.4th 738, 752 (9th Cir. 2026); *For a Better Bayou*, 188 F.4th at 537.

[29] *Commonwealth LNG, LLC*, 191 FERC ¶ 61,205, at P 18 n.57 (2025).

[30] *Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004); see *Sierra Club v. FERC*, 867 F.3d 1357, 1370 n.7 (D.C. Cir. 2017) (NAAQS comparison are one reasonable methodology but not the only one and an "agency's 'choice among reasonable analytical methodologies is entitled to deference'").

whether the action was "reasonable and reasonably explained."[31] Reliance on permit limits set by the agencies Congress charged with air regulation is a more logical approach than the Commission's own selection of modeling parameters and exposes Commission orders to fewer grounds for appeal.

An agency changing course need only acknowledge the change, show that the new policy is permissible, and supply good reasons for it.[32] The Draft Policy Statement does each: it describes the prior practice, explains why it no longer serves the Commission's decision-making, and grounds the new approach in NEPA, *Seven County*, and the CAA.[33] Adopting the change through a noticed policy statement, rather than in a case by case manner, allows each future order to incorporate a single reasoned approach to air emissions.

V. The Draft Policy Statement is a Common-Sense Procedural Change to Reduce Duplicative Analysis

The Draft Policy Statement changes a staff information practice and the metric used for NEPA significance, and nothing else. The regulations requiring description of existing air quality, project impacts, regulatory compliance, and mitigation remain in force.[34] Applicants remain obligated to obtain every required permit under the CAA, and FERC's orders will continue to condition authorization on obtaining them.[35] Similarly, General Conformity review is unaffected.[36] Staff will continue to quantify operational emissions of criteria pollutants,

[31] *Seven County*, 605 U.S. at 179-180(distinguishing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)).

[32] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016).

[33] Draft Policy Statement at PP 13-15, 16-30, 31-39.

[34] 18 C.F.R. § 380.12(k)(1), (3), (5).

[35] Draft Policy Statement at PP 5, 26.

[36] *Id.* at P 14 n.38; Swett Concurrence at P 22.

hazardous air pollutants, and greenhouse gases for each source.[37] The proposal restores Commission practice to the scope of its statutory charge.[38]

The proposal cannot affect the quantity of emissions because dispersion modeling does not determine emissions. Operational emissions from compressor stations and LNG facilities are fixed by equipment design and by enforceable federal and state limits: New Source Performance Standards for combustion turbines, reciprocating engines, and compressors;[39] National Emission Standards for Hazardous Air Pollutants for the same equipment;[40] best available control technology and the prohibition on causing or contributing to a NAAQS violation for major sources;[41] and state minor-source permitting under EPA-approved implementation plans.[42] A dispersion model takes those emission rates as inputs and predicts ambient concentrations; it does not set, lower, or enforce any limit. The Commission has identified no instance in which its NEPA modeling reduced operational emissions below what CAA compliance already required.[43]

The existing substantive environmental review and permitting process beyond NEPA is already one of the most comprehensive processes of any commercial development program grounded in review by agency experts at the agencies Congress has entrusted with protecting resources like the quality of our nation's air. That division of labor is confirmed by the conclusion of an industry-commissioned study of the compressor station regulatory process, which recognized that "[w]hile FERC is required to perform a comprehensive review of natural gas transmission compressor stations, other agencies must perform additional detailed reviews of the impacts from these facilities and must issue permits to allow the project to proceed," under

[37] Draft Policy Statement at P 35.
[38] *Id.* at P 15.
[39] 40 C.F.R. pt. 60, subpts. JJJJ, KKKK, OOOOb (2025).
[40] *Id*. pt. 63, subpts. YYYY, ZZZZ (2025).
[41] 42 U.S.C. §§ 7475(a)(3)-(4), 7503.
[42] *Id*. § 7410(a)(2)(C); 40 C.F.R. §§ 51.160-.164 (2025).
[43] Draft Policy Statement at P 26; Swett Concurrence at P 16.

this system EPA—not FERC—requires that emissions from a given projects "must meet air quality standards that are designed and implemented to be protective of human health."[44] Because the substantive review and control of air emissions rests with EPA and the states, the Commission's decision to stop duplicating that analysis does not mean that emissions or air quality impacts will increase or change.

Instead, what the proposal removes is duplication. For major sources triggering the Prevention of Significant Deterioration ("PSD") program under New Source Review ("NSR") permitting requirements, the state permitting authority already requires modeling under EPA's Guideline on Air Quality Models as a condition of obtaining the permit.[45] To assess the air quality impact of a major new source under the PSD program, projects must conduct modeling according to EPA-approved protocols that are designed to prevent adverse cumulative air impacts.[46] This process involves first a "Significance Analysis," followed (if modeled emissions are above insignificant levels) by a "Full Impact Analysis," which considers not only emissions from the project, but also ambient background and emissions from other sources within an area of impact.[47] This process is designed to avoid significant deterioration of air quality due to a proposed project and inherently includes a cumulative impact analysis.

Moreover, for all draft Title V permits issued by states, EPA has a 45-day review period before the state may issue the permit, ensuring that such stated action is consistent with the Clean

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[44] TRINITY CONSULTANTS, HOW THE REGULATORY PROCESS PROTECTS THOSE LIVING NEAR NATURAL GAS TRANSMISSION COMPRESSOR STATIONS 47 (2016) (available at https://www.kindermorgan.com/WWWKM/media/Documents/Projects/East-300-Compressor-Health-and-Safety-Study.pdf).

[45] 40 C.F.R. § 51.166(l); 40 C.F.R. pt. 51, app. W (2025).

[46] *See* "Prevention of Significant Deterioration Basic Information", EPA, https://www.epa.gov/nsr/prevention-significant-deterioration-basic-information (last visited Nov. 13, 2024).

[47] 40 C.F.R. pt. 50, app. W.

Air Act.[48] For minor sources, the states have determined under their EPA-approved plans that such sources do not generally warrant modeling, but retain discretion to require modeling in appropriate circumstances.[49] In all cases the Commission's separate modeling has exceeded, duplicated, or conflicted with the state's analysis of the same facility and the same emissions.[50] The result has been repeated data requests and delay for projects whose emissions were already or will be reviewed and approved.[51] Eliminating a second model of the same emissions is the reduction Congress directed when it limited NEPA documents and relieved agencies of non-essential technical studies.[52]

The Commission should also not require applicants to file in its docket the materials submitted to state air regulators.[53] Applicants already must identify applicable permits and explain how the project will comply,[54] and a mandatory filing requirement would reintroduce the parallel submission the policy eliminates. The voluntary pathway suggested in the Draft Policy Statement is sufficient.[55] Under this policy, FERC's standard approval process can move forward under the considerations FERC's expertise is focused with while satisfying CAA permitting is treated as part of the standard conditional approvals process already used for other permits that run concurrently or subsequently to the Commission's. Incorporated in this way the Draft Policy Statement can greatly expedite this process while EPA or a delegated state separately focuses on reviews under their purview without unnecessary, repetitive, and time-consuming repetition.

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[48] 40 C.F.R. §70.8.

[49] Draft Policy Statement at PP 22-23.

[50] *Id.* at P 17; *ANR Pipeline Co.*, 194 FERC ¶ 61,059, at P 70 (2026); *Rio Grande LNG, LLC*, 192 FERC ¶ 61,198, at P 41 (2025); *see* Dissent at P 12 (different study areas and purposes).

[51] *See* Draft Policy Statement at P 17.

[52] 42 U.S.C. §§ 4336(b)(3), 4336a(e), (g).

[53] *See* Draft Policy Statement, Rosner, Comm'r, concurring, at P 5.

[54] 18 C.F.R. § 380.12(k)(3).

[55] Draft Policy Statement at P 36.

To achieve these benefits and avoid prolonging uncertainty for projects already before the Commission,the Associations urge the Commission to implement the final Policy Statement by applying it to current, pending, and future projects under NGA sections 3 and 7, rather than limiting its application to applications filed after its effective date.

VI. The Draft Policy Statement Will Not Leave Air Quality Effects Unexamined or Uncontrolled

The necessity of FERC independently requiring air modeling rests on several assumptions: that a modeled concentration is an accurate measure of local air quality, that the CAA does not already examine local impacts, and that Commission-required modeling is what holds emissions in check. The technical record supports none of these contentions.

The structure of the CAA and NEPA do not support the notion that without dispersion modeling, the Commission will be unable to adequately assess a project's effects as required by NEPA and the NGA. While it is possible that modeling "can reveal substantial differences in air quality impacts from two facilities that have identical amounts of total emissions," models have substantively different levels of accuracy for different types of locations and FERC is not the correct body to review these technical, mathematical, and highly complex assumptions. State air permitting under the CAA encompasses a comprehensive program that also includes local air quality and health impacts. Moreover, there has never been a project reviewed by FERC where without the Commission's review of air modeling the project would "not take the necessary steps to avoid causing or contributing to local NAAQS exceedances."[56]

First, a dispersion model does not *measure* air quality. It *estimates* air quality, and the estimate from any given model is subject to varying margins of error under which no single

[56] *Id.* at PP 12, 14, 29, 32, 55.

model will be purely "accurate."[57] EPA's Guideline on Air Quality Models recognizes that the "'irreducible' uncertainty associated with Gaussian plume models may be responsible for variation in concentrations of as much as ± 50 percent," with errors of "10 to 40 percent [] found to be typical" that reducible uncertainties "can be on a similar scale," and that estimates of concentrations "paired in time and space with observed concentrations are less certain."[58]

For example, AERMOD, EPA's preferred model, and the only named model in FERC's guidance manual,[59] "was initially developed and validated with a primary focus on larger sources with taller stacks, such as electric utility boilers."[60] This may, then, have limited utility for the full spread of FERC-approved facilities for which FERC had previously used AERMOD to review. Given these inherent uncertainties in AERMOD modeling, Commission-required modeling reliant upon AERMOD does not supply a truly accurate estimate of emissions, rather, it more likely provides a contestable estimate, which is why it has generated data requests and litigation rather than better-informed decisions.[61]

Second, the CAA does examine local air quality, and the agencies that administer it have expertise the Commission lacks. EPA must set the NAAQS at a level "requisite to protect the public health," "allowing an adequate margin of safety," must review them every five years, and applies them to all ambient air, including the air at or beyond a facility's fence line.[62] A major

[57] *See, e.g.*, *id.* at PP 18, 22, 25, 29, 35.

[58] 40 C.F.R. pt. 51, app. W, § 4.1(e) (2025).

[59] FED. ENERGY REGUL. COMM'N, GUIDANCE MANUAL FOR ENVIRONMENTAL REPORT PREPARATION FOR APPLICATION FILED UNDER THE NATURAL GAS ACT at 4-127 (available at https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf).

[60] INNOVATIVE ENVTL. SOLUTIONS, INC., AERMOD PERFORMANCE ASSESSMENTS, IMPLEMENTATION ISSUES AND RECOMMENDED IMPROVEMENTS, PRCI Catalog No. PR-312-18208-R03, at 10 (July 11, 2022) ("AERMOD Performance Report"); *see also* PETERSEN RESEARCH & CONSULTING, LLC & INNOVATIVE ENVTL. SOLUTIONS, INC., PRCI WHITE PAPER: PVMRM THEORETICAL ISSUES AND RECOMMENDED SOLUTIONS, PRCI Catalog No. PR-312-18208-E02, at 1, 3 (June 18, 2021) ("PVMRM White Paper").

[61] *See supra* Part IV; Draft Policy Statement at PP 17-18.

[62] 42 U.S.C. § 7409(b)(1), (d)(1); 40 C.F.R. § 50.1(e) (2025) (defining "ambient air"); *see* PVMRM White Paper at 1 (modeled impacts "are compared to the NO_2 NAAQS at or beyond the facility fence line").

source cannot be permitted unless it demonstrates that its emissions will not cause or contribute to a violation,[63] and that demonstration is made through modeling that accounts for nearby sources and evaluates specific receptor locations such as schools and hospitals.[64] Every state's minor source program, in turn, must include legally enforceable procedures to prevent construction of a source that would interfere with attainment or maintenance of a standard.[65] When modeling is warranted, it is conducted under EPA's Guideline, which stresses that "[t]he judgment of experienced meteorologists, atmospheric scientists, and analysts is essential," and any departure from EPA's preferred techniques requires the approval of the EPA Regional Office in consultation with EPA's Model Clearinghouse.[66] These offices, unlike FERC, specialize in mathematical modeling and atmospheric science necessary to apply and interpret these models in such a way as to ensure statutory requirements under the CAA. Congress also assigned stewardship of the models to EPA, directing it to specify the models to be used and to convene a conference on air quality modeling at least every three years.[67] FERC is not an atmospheric science agency; the Commission administers none of these programs, and its staff "are . . . not equipped to produce air dispersion modeling themselves."[68] Neither are the Commission's staff equipped to address model deficiencies, developments, or crucially assess where modeling is not accurate. As the study's authors observed, Commission-requested modeling of existing sources "is not required by either state or federal environmental regulatory agencies to support air permitting for project related activities," and the Commission's reliance on such modeling "increases the complexity of the FERC environmental review process, can

[63] 42 U.S.C. § 7475(a)(3); 40 C.F.R. § 51.166(k) (2025).
[64] Dissent at P 11 & n.22.
[65] 40 C.F.R. § 51.160(a)-(b) (2025); *see* Draft Policy Statement at P 22.
[66] 40 C.F.R. pt. 51, app. W, §§ 1.0(c), 3.2.2(a), 3.3(a) (2025).
[67] 42 U.S.C. §§ 7475(e)(3)(D), 7620(a).
[68] Draft Policy Statement at P 17.

create confusion due to conflicting regulatory conclusions made by FERC and the delegated air permitting authorities, and can result in project approval delays."[69]

Third, actual knowledge and control of air quality come from the regulatory system the CAA establishes, and that system operates whether or not the Commission requires a model. States operate ambient monitoring networks under EPA's specifications, and the measured data determine whether an area attains the standards and, if it does not, trigger mandatory plan revisions and additional controls.[70] Permits impose enforceable emission limits backed by performance testing, monitoring, recordkeeping, reporting, and compliance certification,[71] and those limits are enforceable by EPA, the states, and citizens.[72]

The Commission's current practice is not what leads applicants to minimize emissions; rather project design and emissions are governed by enforceable CAA requirements, which the Draft Policy Statement has no authority to change because such considerations are outside FERC's jurisdiction.[73] It is through EPA's authority under the CAA that substantive examination and control of air emissions occurs—a program statutorily exempt from NEPA review due to the program's comprehensive nature. Discontinuing the Commission's duplicate analyses neither removes nor impacts any substantive regulation of air emission impacts.[74]

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[69] AERMOD Performance Report at 15; *accord* Draft Policy Statement at P 17 (Commission-required modeling "often exceeds, duplicates or, worse, conflicts with the modeling requirements imposed by state air regulatory agencies for the same projects").

[70] 42 U.S.C. §§ 7407(d), 7410(a)(2)(B), 7502; 40 C.F.R. pt. 58 (2025).

[71] *See, e.g.*, 40 C.F.R. §§ 60.8, 63.7 (2025) (performance testing); 42 U.S.C. § 7661c(a)-(c); 40 C.F.R. § 70.6(a)(3), (c) (2025) (monitoring, recordkeeping, reporting, and compliance certification).

[72] 42 U.S.C. §§ 7413, 7604.

[73] Draft Policy Statement at PP 5, 21-24; *see supra* Part V.

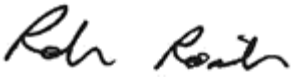
[74] The two orders the dissent cites required monitoring and mitigation planning, not lower operational emissions, and one of them directed the operator to "contact the state air quality agency to report [any] violation and establish a plan of action . . . in accordance with the terms of the facility air permit and applicable state law." Dissent at P 43 n.52 (quoting *Transcon. Gas Pipe Line Co.*, 158 FERC ¶ 61,125, at PP 117-18 (2017)); Draft Policy Statement at P 26 & nn.69-70; *see also* Swett Concurrence at P 16 (the number of cited instances in which the Commission's modeling "led to an actual reduction in operational emissions, beyond what was already inherent in compliance with governing CAA requirements, is zero").

As to Commission review of air emissions, consistent with NEPA and the NGA the Commission will continue to quantify operational emissions, describe existing air quality, consider "proximity to other emissions sources," identify the permits and controls that will apply, analyze any modeling an applicant has prepared for air permitting and chooses to submit, and consider public comments.[75] What the Commission will no longer do is require applicants to convert that information into a predicted concentration using a model whose accuracy for these sources is limited and whose output "rarely, if ever, alters the Commission's substantive decision-making."[76] Such a policy is eminently reasonable. NEPA does not require an agency to generate a contested technical study that would not inform its decision.[77] The Commission will know what a project will emit, what limits will bind it, and what the air quality is where it will be built. The agencies with the expertise and authority to do so will determine whether further analysis or control is warranted. And emissions will be the same as they would have been had the Commission required a model of its own.

[75] Draft Policy Statement at PP 4, 35-36, 39; 18 C.F.R. § 380.12(k).
[76] Draft Policy Statement at P 28.
[77] *Seven County*, 605 U.S. at 182-83; 42 U.S.C. § 4336(b)(3).

VII. Conclusion

The Associations fully support the Draft Policy Statement as proposed. It is precisely the type of recalibration of NEPA review that *Seven County* contemplated - it will reduce unnecessary NEPA review, and yield more durable orders, without changing emission limits or CAA obligations, and without diminishing the examination and control of air emissions by the agencies Congress charged with that task.



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