



May 15, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Office of the Administrator, 1011A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

RE: Evaluation of Existing Regulations, Docket ID No. EPA-HQ-OA-2017-0190

We appreciate the opportunity to provide comment on EPA's effort to implement President Trump's Executive Order 13777 *Enforcing the Regulatory Reform Agenda*. Western oil and natural gas companies have weathered eight years of red tape that the previous administration used to curtail development of American energy. While industry is and should be regulated, duplicative regulation went far beyond reasonable oversight, delivering very little environmental benefit despite huge cost.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents; the majority of which are small businesses with an average of fifteen employees.

We appreciate that EPA is reviewing its existing rules to implement the Executive Order, and look forward to helping the agency take meaningful steps to roll back regulations that hurt jobs or are outdated, unnecessary or otherwise unlawful. EPA's decision to evaluate existing regulations is lawful, reasonable and prudent. Western Energy Alliance is available to work with EPA on re-evaluating the agency's policies and rolling back regulations inconsistent with the Executive Order in a legally defensible manner.¹

Western Energy Alliance believes EPA should use this opportunity to take a comprehensive look at many different regulations for possible reconsideration or rescission. However, given EPA's limited resources and the time-consuming nature of the rulemaking process, Western Energy Alliance recommends reconsidering high priority rules based on the Executive Order priorities around job creation and cost-benefit analyses. In addition, while many outdated rules are certainly worthy of attention, those rushed in at end of the Obama Administration as part of a coordinated effort to suppress oil and natural gas development should have higher priority.

¹ [Intention to Review and Rescind or Revise the Clean Water Rule](#), 82 Fed. Reg. 12532, March 6th, 2017.

These comments identify rules that are ripe for review, with example issues for each. We look forward to providing more detailed technical comments on each rule individually should EPA decide to move forward with reconsideration. We have engaged extensively in the rulemaking process through formal comments on a number of the rules below, and for EPA's convenience, have referenced our comments where appropriate. These comments also provide further evidence of technical issues we have identified in various rules.

Top Priority Rules

New Source Performance Standards (NSPS) Subpart OOOOa

The rule in its current form does not align with Executive Order 13783, *Presidential Executive Order on Promoting Energy Independence and Economic Growth* and should be revised or rescinded. The rulemaking marked an abuse of the reconsideration process by unlawfully expanding the 2012 NSPS OOOO rule to include methane emissions. We believe EPA does not have the authority regulate methane in the absence of a source-specific methane endangerment finding. At a minimum, EPA should refocus the rule on just volatile organic compounds (VOCs) which are precursors to ozone formation, a criteria pollutant designated by Congress in the Clean Air Act, unlike methane.

One significant issue EPA failed to address in its final rule is the lack of an exemption for low-production wells from fugitive emissions monitoring. While the draft rule did allow wells producing below 15 barrels of oil equivalent per day to be exempted from fugitive monitoring requirements, the final rule removed this exemption. This change failed to account for the fact that low production wells typically require less equipment, and therefore have less emissions. A full list of our technical concerns with the proposed OOOOa rule can be found in our comments.² EPA also made several significant changes in the final rule, for which we did not have the opportunity to provide comment. In particular, we're have concerns with the final rule's sections on professional engineer design certifications and alternative means of emission limits. We recommend EPA provide opportunity for public input and revise these sections accordingly.

Greenhouse Gas Reporting Program Subpart W

The Greenhouse Gas Reporting Program has evolved over time to include numerous provisions that greatly increase the overall reporting burden without providing commensurate environmental benefit. Western Energy Alliance submitted comments on several provisions of Subpart W that were inconsistent with existing rules, difficult to implement, or unclear but EPA largely implemented its proposed changes to the rule without significant revisions.³ For example, it included reporting requirements based on NSPS OOOOa fugitive monitoring, yet as EPA is well aware, those requirements are suspended pending administrative review of OOOOa. The Subpart W amendments

² [Western Energy Alliance Comments on NSPS OOOOa and CTGs](#), December 4, 2015.

³ [Western Energy Alliance Comments on Greenhouse Gas Reporting Program Subpart W](#), March 15, 2016.

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muddied the waters by prematurely referencing a flawed rule that has not yet taken effect.

We recommend EPA rescind the most recent Subpart W amendments and revisit the emission factors and calculation methods required under Subpart W. We believe there is also ample opportunity to reduce the program reporting burden by revisiting reporting frequencies. Ultimately, we believe it is appropriate for EPA to revisit the program's authorization to see if it is still in line with its original purpose, and whether that is consistent with new administration policy.

2015 Ozone National Ambient Air Quality Standard

Ozone is a major concern across the West in both rural and urban areas, and affects regions both with and without significant oil and natural gas production or other industrial activity. Part of what makes ozone such a difficult problem to address is that much of the ozone detected in the West is due to regional or global transport. Scientific studies have estimated the contribution of ozone transported into the West from Asia⁴ and resulting from stratospheric intrusions.⁵ As the National Ambient Air Quality Standard (NAAQS) for ozone approaches observed background levels in the West, there is very little states can do to address ozone because ozone levels are not primarily caused by local emissions sources.

We believe there needs to be a fundamental change to how EPA and western states address ozone emissions. In the eastern U.S., states take a regional approach that recognizes the challenges downwind states face. We believe a similar approach that accounts for western-specific concerns like high altitudes, topography, stratospheric intrusions, wildfires, and Asian ozone transport would be more effective than EPA's current strategy of developing piecemeal ozone plans. Similarly, wintertime ozone issues that are unique to a few regions in the West are driven by their own set of environmental factors. Despite years of research, our understanding of the mechanisms of western background ozone and wintertime ozone are limited. EPA currently relies on flawed photochemical models that don't account for the West's unique circumstances. We support EPA's review of the 2015 ozone standard and stress the importance of developing a framework that allows states to flexibly address ozone, regardless of the exact level of the standard. Implementation guidance with realistic timelines, and a more transparent and flexible approach to reviewing exceptional events are both critically needed.

Indian Country Minor New Source Review (Tribal NSR)

The Tribal NSR rule provides important regulatory certainty for Indian Tribes and companies operating on Tribal lands, but has several important flaws. With that in mind,

⁴ [Improved estimate of the policy-relevant background ozone in the United States using the GEOS-Chem global model with 1/2° × 2/3° horizontal resolution over North America](#), Zhang et al. December 2011.

⁵ [Work Group for Analysis of Ozone Stratospheric Intrusion Events](#), EPA, October 10-12, 2012.

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we support a targeted rule revision aimed at the prior administration's overreach without compromising any of the protections for Tribal lands.

First, the rule failed to adequately address nonattainment area applicability. Operators seeking permits in areas facing nonattainment designation may be forced to rely on site-specific permitting, which is a significant burden to EPA resources, as well as a potential source of major project delays. We urge EPA to clarify that when an area is designated nonattainment, the National Federal Implementation Plan (FIP) will apply until it is replaced by an area-specific State Implementation Plan (SIP) or FIP.

Second, the rule includes a requirement that operators certify the impacts to cultural resources and species, which is outside of EPA authority. We are concerned that the requirements for additional analysis under the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) in the National FIP will lead to additional lengthy permitting delays. It is counterproductive to develop a nationwide FIP for permitting that includes site-specific individual determinations for each permitted location. Operators must already contemplate impacts to threatened and endangered species as well as cultural resources in development plans. This added, secondary layer of approval proposed by EPA will add delay and expense while duplicating existing protections for species and cultural resources.⁶ We recommend EPA remove the ESA and NHPA assessment confirmation and screening procedures from the National FIP.

Finally, we urge EPA to make the following additional revisions to the National FIP: (1) to further the streamlined nature of the National FIP, replace the separate Part 1 and Part 2 registrations with a single, post-construction registration; (2) to establish more certainty and consistency, remove the provisions in the National FIP that grant broad discretion to require source-specific permitting in lieu of allowing sources to utilize the National FIP's registration process and (3) to conserve Agency resources and broaden the benefits of the National FIP, include a simplified permitting mechanism for synthetic minor sources.

High Priority Rules

Waters of the United States (WOTUS)

We support EPA's decision to review and revise or rescind the WOTUS rule. The 2015 rule defined federal authority far too broadly, and we support EPA's efforts to revise the rule to be in line with the Scalia opinion in the *Rapanos* Supreme Court case.⁷ We also support EPA's two-step approach to revoking and subsequently reissuing a proposed rule. This approach is prudent given the ongoing litigation, and will align with the requirements of the Administrative Procedure Act.

⁶ [Western Energy Alliance Comments on the Tribal NSR Rule](#), December 4, 2015

⁷ [Western Energy Alliance Comments on WOTUS](#), November 14, 2014.

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New Source Performance Standards (NSPS)

There are several issues with the NSPS program we recommend EPA evaluate. Potential to emit calculations should be revised to allow sources to claim credit for emission reductions that may not necessarily be included in SIPs that were developed prior to rules like OOOOa.

We also recommend EPA re-evaluate the once-in-always-in provisions of the Maximum Achievable Control Technology (MACT) program that were transposed to the NSPS program. As it's currently applied, the once-in-always-in provision disincentivizes sources from voluntarily controlling below the NSPS thresholds. From a practical standpoint, this means that there's a perverse incentive for sources that would like to reduce emissions to avoid NSPS applicability. Instead of reducing emissions to remain below NSPS applicability, sources are forced to comply with NSPS and receive no benefit from voluntarily reducing emissions. The OOOOa leak detection and repair (LDAR) program illustrates this problem well. Since there is no off-ramp for OOOOa LDAR applicability, sources remain subject to NSPS regardless the actual emissions being reduced and the resources required to make those reductions. Since cost-effectively reducing emissions should be the goal of any air quality regulatory scheme, we recommend EPA adjust its approach to once-in-always-in requirements.

Control Techniques Guidelines (CTGs)

The CTGs for the oil and natural gas industry were developed in parallel with the OOOOa rulemaking. The CTGs largely applied NSPS-level controls to existing sources without appropriately considering the technical and economic constraints of retrofitting existing sources, and incorporated other flawed economic assumptions. For example, the economic analysis relied on gas recovery to offset the cost, yet it assumed natural gas prices of \$4/MCF, which is much higher than prices both during the rulemaking and today. Furthermore, it made no effort to account for infrastructure constraints and regional economics that may lead to even lower prices being realized. We recommend that EPA re-evaluate CTGs along with OOOOa.

Other Rules

Aquifer Exemptions

In 2016, several groups petitioned EPA to repeal or amend the aquifer exemptions in the Safe Drinking Water Act and EPA agreed to conduct a review of the program. However, EPA's Underground Injection Control program specifically states that aquifer exemptions can only be applied to aquifers "that do not currently serve as a source of drinking water and will not serve as a source of drinking water in the future, based on certain criteria." EPA should acknowledge that current state and federal programs have been successfully protecting underground aquifers, which we believe will become clear in the course of EPA's analysis. For example, EPA's review of Ohio's wastewater injection program noted

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the state program is, “strong in several areas including permitting, inspections and resolving violations found during inspections.”⁸

Resource Conservation and Recovery Act (RCRA) Subtitle D

EPA is also required to conduct a review of the RCRA Subtitle C exemption for oil and natural gas exploration and production (E&P) waste by 2019. Currently E&P waste is regulated under RCRA Subtitle D, rather than the hazardous waste requirements of Subtitle C. We encourage EPA to focus on the efficacy of state E&P waste management programs. With the wide variability in E&P waste based on local environmental and geologic conditions, we believe EPA’s current practice of deferring to states is appropriate, given state regulators’ knowledge of on-the-ground conditions.

National Ambient Air Quality Standards

The NAAQS program has several provisions that are difficult to manage or create burden in excess of any realized environmental benefits. For example, the current review period NAAQS standards is extremely difficult for EPA to meet. We recommend exploring solutions with Congress to implement a more realistic review timeline, such as increasing the review period from five to ten years. Such an increase would free up significant agency resources while more accurately reflecting the amount of work involved in updating the NAAQS. A more reasonable review timeline would also better serve EPA compliance assistance efforts. EPA will have more time to assist nonattainment areas in meeting the current standard before issuing mandates under a subsequent standard.

Several of the standards themselves are duplicative and complicated efforts to conduct project air quality monitor. For example, the one-hour NO₂ standard provide no additional benefit or threshold for pollution and could easily be replaced by eight-hour or 24-hour standards which would simplify project modeling and compliance without jeopardizing the program’s overall effectiveness for protecting public health.

Non-Rulemaking Issues

While not specific regulatory actions, we believe there are a number of policy positions EPA can assert that would bring much-needed clarity, transparency, and balance to its mission of protecting clean air and water for all Americans in the most efficient manner possible.

Deference to State Programs

In recent years, EPA has been reluctant to defer to state regulatory programs, which leads to significant regulatory conflict and overlap. For example, in the OOOOa rulemaking, EPA heavily referenced Colorado, Wyoming, and Utah regulations as models. Yet when it comes time to recognize those same rules as equivalent to EPA rules, the process of obtaining an equivalency determination is remarkably difficult. We recommend EPA

⁸ [U.S. EPA Praises ODNR’s Waste Water Injection Well Program](#), Ohio Department of Natural Resources. September 17, 2015.

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establish a clear process for conducting equivalency determinations that defer to states when appropriate.

Review of EPA's Authority Under Section 111(d) of the Clean Air Act

With the ongoing litigation over the Clean Power Plan, it is clear that there are many open questions about EPA's authority under Section 111(d) of the Clean Air Act (CAA). We recommend EPA explore an interpretive rulemaking that clarifies states' rights for existing source rulemakings. We recommend EPA conduct this review prior to promulgating any existing source rules. Even if the agency has no immediate plans to embark on existing source rulemaking, a review will still be worthwhile. The 2016 Information Collection Request (ICR) for oil and natural gas facilities is an example of the type of burden that can be imposed by EPA prior to formally beginning rulemaking. By conducting a review of its authority, EPA can avoid those types of burdensome actions moving forward when authority to create existing source rules remains an open question.

The Social Cost of Carbon and Social Cost of Methane

In their current forms, the Social Cost of Carbon (SCC) and Social Cost of Methane (SCM) are not usable. We support the administration's decision to withdraw both from use in rulemakings. The SCC and later the SCM were developed as measurements of the external costs that come from the release of carbon and methane into the atmosphere. The calculations do not adequately account for the many benefits of using oil, natural gas and coal. The calculations rely on computer models that project both environmental and economic impacts out to the year 2300, and are based on numerous assumptions about the global economy and climate. Yet trying to project what will happen a lifetime from now, especially with all the variables involved, is a nearly impossible task.

Thank you again for the opportunity to comment on regulations in need of review. We support EPA's effort to reduce the regulatory burden while maintaining the critical functions of protecting public health and the environment. Should EPA move ahead with actions to revise or rescind any of the rules discussed here, we will provide detailed technical input and common-sense solutions.

Sincerely,



Kathleen M. Sgamma
President