



August 2, 2016

Via first class mail and email

Administrator Gina McCarthy
Office of the Administrator
Environmental Protection Agency
William Jefferson Clinton Building
Mail Code 1101A
1200 Pennsylvania Ave NW,
Washington DC 20004

RE: Request for Partial Reconsideration and Stay of EPA's Final Rule entitled Oil and Natural Gas Sector: Emission Standards for New, Modified, and Reconstructed Sources, 81 Fed. Reg. 35,824 (June 3, 2016) (Docket No. EPA-HQ-OAR-2010-0505)

Dear Administrator McCarthy,

GPA Midstream Association ("GPA Midstream") respectfully requests that the U.S. Environmental Protection Agency ("EPA") Administrator grant partial reconsideration of a number of specific and discrete issues in EPA's Final Rule entitled Oil and Natural Gas Sector: Emission Standards for New, Modified, and Reconstructed Sources, 81 Fed. Reg. 35,824 (June 3, 2016) (the "Final Rule").

GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of close to 100 corporate members of all sizes 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. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. GPA Midstream's members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

Introduction

GPA Midstream and its members have a strong commitment to gathering and processing natural gas in a manner that minimizes environmental impacts and reduces emissions of valuable natural gas products to the fullest extent feasible. As a result, GPA Midstream's members have taken significant steps to reduce methane and volatile organic compound ("VOC") emissions from their operations. A number of GPA Midstream's members are voluntary participants in

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EPA's Natural Gas Star Program where they have reduced methane emissions in accordance with EPA's program requirements. As *The Wall Street Journal* recently reported, over the last decade, methane emissions from the natural gas sector have declined significantly:

The EPA's Greenhouse Gas Inventory acknowledged this year that methane emissions from natural gas production have fallen 35% since 2007. That's despite a 22% increase in gas production over the same period. The EPA last year found that methane emissions from hydraulically fractured gas wells had fallen 73% from 2011 to 2013. Overall methane emissions are 17% lower than in 1990.¹

In addition, GPA Midstream has a long history of working collaboratively with state and federal regulators to identify commonsense solutions on a wide range of regulatory issues—including many environmental issues. GPA Midstream hopes to continue that collaborative working relationship with EPA through this rulemaking and reconsideration process.

After reviewing EPA's Final Rule, GPA Midstream has identified several specific and discrete issues that will pose implementations challenges and require reconsideration and/or clarification. The changes requested will still enable EPA to realize its environmental protection goals while at the same time reflecting the pragmatic practices and realities faced by this complex industry.

- First, EPA must increase the 0° Fahrenheit temperature threshold for waiving quarterly leak detection monitoring to 32° Fahrenheit. EPA failed to provide notice that it was considering a temperature-based waiver. A higher temperature is necessary to protect workers from exposure to inclement weather at locations where average temperatures may exceed 0° Fahrenheit, but the combination of cold temperatures, wind, and lack of access to warm structures may pose substantial risk to monitoring personnel.
- Second, EPA must revise the definition of well site to explicitly exclude equipment owned and operated by midstream operators. The definition in the Final Rule is ambiguous and, based on EPA's Response to Comments, this ambiguity could potentially be misinterpreted to include some midstream assets. Upstream producers and midstream operators are legally distinct and it would be both unreasonable and costly to subject midstream operators to leak detection monitoring requirements based on the independent actions of third parties.
- Third, EPA must remove compressors from the definition of fugitive emissions components. Compressors are separately regulated under Subparts OOOO and OOOOa and including them within the definition of fugitive emissions

¹ *Political Target: Natural Gas: The methane rule is part of a regulatory wave to raise drilling costs, The Wall Street Journal* (Aug. 23, 2015).

components is duplicative and will provide no added value to EPA while adding significant unnecessary burdens to industry.

- Fourth, EPA must add “the collection of fugitive emission components” at a compressor station to the list of sources that are exempt from reconstruction notification requirements under 40 C.F.R. § 60.15. Collections of fugitive emissions components are subject to the same notification of reconstruction requirements as other sources listed in 40 C.F.R. § 60.5420(a) and should be allowed the same exemption.
- In addition, GPA Midstream supports two items related to Certification by a Professional Engineer (“PE”) requirements for which the American Petroleum Institute (“API”) has petitioned for reconsideration. Specifically, API requested that the requirements for Certification by a PE finalized for technical infeasibility determinations at brownfield sites be removed and stayed pending reconsideration, and that EPA clarify when a greenfield site transitions to a brownfield site.

GPA Midstream is respectfully requesting that EPA grant reconsideration on these issues and make the necessary changes to clarify the obligations imposed on GPA Midstream’s members and to improve implementation of the Final Rule. Because these issues are narrow and discrete they can be addressed by EPA through the reconsideration process without impacting implementation of the rest of the Final Rule or any litigation with respect to the rest of the Final Rule.

I. Standard for Reconsideration

Section 307(d)(7)(B) of the Clean Air Act (“CAA”) provides for EPA’s reconsideration of a CAA rule upon objection by a petitioner. *See* 42 U.S.C. § 7607(d)(7)(B). EPA *must* grant reconsideration when the petitioner:

[C]an demonstrate to the Administrator that it was impracticable to raise [an] objection [during the period for public comment] or if the grounds for such objection arose after the period for public comment . . . and if such objection is of central relevance to the outcome of the rule.

Id. In such a situation, reconsideration is mandatory, as the CAA commands that EPA “*shall* convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.” *Id.* (emphasis added). In addition, general principles of administrative law permit an interested party to apply to EPA for relief from a rule at any time for any relevant reason.

This Petition satisfies the standard for reconsideration. EPA included new provisions in the Final Rule that EPA did not specifically address in its rulemaking proposal. Thus, GPA Midstream was not afforded the opportunity to comment on those newly-included elements of the rule. It was therefore impracticable for GPA Midstream to raise objections to these provisions during the public comment period, and reconsideration is necessary with an accompanying stay. See 42 U.S.C. § 7607(d)(7)(B).

Further, EPA’s inclusion of significant new issues in the Final Rule is arbitrary and capricious because none of the new additions are logical outgrowths of the Agency’s Proposed Rule. The D.C. Circuit has admonished that, “[g]iven the strictures of notice-and-comment rulemaking, an agency’s proposed rule and its final rule may differ only insofar as the latter is a logical outgrowth of the former.” *Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005). “Whether the ‘logical outgrowth’ test is satisfied depends on whether the affected party ‘should have anticipated’ the agency’s final course in light of the initial notice.” *Agape Church, Inc. v. FCC*, 738 F.3d 397, 412 (D.C. Cir. 2013) (quoting *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 548-49 (D.C. Cir. 1983)). Interested parties should not have to “divine the agency’s unspoken thoughts,” *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1080 (D.C. Cir. 2009), or engage in telepathy, *Portland Cement Ass’n v. EPA*, 665 F.3d 177, 186 (D.C. Cir. 2011). Instead, an agency “must describe the range of alternatives being considered with reasonable specificity. Otherwise, interested parties will not know what to comment on, and notice will not lead to better-informed agency decision-making.” *Prometheus Radio Project v. FCC*, 652 F.3d 431, 450 (3d Cir. 2011) (internal citations omitted). Thus, a court will strike down an agency action that seeks to “use the rulemaking process to pull a surprise switcheroo on regulated entities.” *Envtl. Integrity Project*, 425 F.3d at 998.

Further, the Final Rule includes inconsistent and duplicative provisions that cannot be adequately justified or explained. See also *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency must “articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”) (internal quotation omitted). As described below, these inconsistent and duplicative provisions will require GPA Midstream’s members to comply with duplicative and potentially inconsistent regulations and further justify reconsideration.

II. Argument

A. EPA’s Temperature-Based Waiver Provision for Quarterly Monitoring Surveys Is Not a Logical Outgrowth of the Proposed Rule and Must Be Clarified to Provide Meaningful Relief to Regulated Entities

In the Final Rule, EPA added a new temperature-based waiver provision for quarterly monitoring requirements when average monthly temperatures are below 0° Fahrenheit for two out of three months in a quarter. 81 Fed. Reg. at 35,905 (40 C.F.R. § 60.5397a(g)(5)). EPA’s Proposed Rule did not indicate that the agency was considering such a temperature-based waiver

from monitoring requirements. As written, the waiver will provide no meaningful relief to GPA Midstream's members and must be clarified to ensure that regulated entities are not required to conduct monitoring that would be unsafe or infeasible due to inclement weather.

In the Proposed Rule, EPA included a series of provisions that required quarterly, semi-annual, or annual leak detection monitoring under different circumstances based on a company's history success in reducing methane leaks from compressor stations. *See* 80 Fed. Reg. at 56,668 (proposed 40 C.F.R. § 60.5397a(g)-(i)). EPA solicited comment on the appropriate frequency of leak detection monitoring for compressor stations, *id.* at 56,612-14, but did not suggest that it was considering the inclusion of waiver provisions based on temperature or any other factor.

In its comments on the Proposed Rule, GPA Midstream urged EPA to adopt uniform annual leak detection monitoring requirements for compressor stations. In support of its request for annual leak detection monitoring, GPA Midstream explained that sites located in northern and mountainous regions often experience significant snowfall and extreme temperatures that prevents access to some remote compressors stations for long periods of time. Allowing for annual leak detection monitoring would allow operators to conduct monitoring during summer months when weather conditions permitted.

In the Final Rule, EPA finalized requirements for quarterly leak detection monitoring, but added the following waiver provision for quarterly monitoring requirements:

(5) The requirements of paragraph (g)(2) of this section are waived for any collection of fugitive emissions components at a compressor station located within an area that has an average calendar month temperature below 0 °Fahrenheit for two of three consecutive calendar months of a quarterly monitoring period. The calendar month temperature average for each month within the quarterly monitoring period must be determined using historical monthly average temperatures over the previous three years as reported by a National Oceanic and Atmospheric Administration source or other source approved by the Administrator. The requirements of paragraph (g)(2) of this section shall not be waived for two consecutive quarterly monitoring periods.

80 Fed. Reg. at 56,668 (40 C.F.R. § 60.5397a(g)-(i)). In the preamble to the Final Rule, EPA explained that the waiver provision was included for two reasons. First, commenters explained that extreme winter weather created risk for the safety of monitoring survey personnel and also created access challenges when contractors were required to conduct surveys at unmanned sites. 81 Fed. Reg. at 35,862. EPA also expressed concern that optical gas imaging ("OGI") monitors may not perform correctly at temperatures below 0° Fahrenheit. *Id.*

GPA Midstream supports the inclusion of provisions that provide flexibility for conditions that make quarterly monitoring infeasible or unsafe. However, EPA's inclusion of a temperature-based waiver for quarterly reporting was announced for the first time in the Final Rule and thus is not a logical outgrowth of the Agency's proposal. EPA did not provide GPA

Midstream and other commenters with notice that it was considering a temperature-based waiver as a means of addressing challenges posed by quarterly leak detection monitoring. As a result of EPA's silence with respect to the potential waiver of leak detection monitoring requirements under certain circumstances, EPA failed to "describe the range of alternatives being considered with reasonable specificity. *Prometheus Radio Project*, 652 F.3d at 450. The fact that one commenter suggested such a waiver after providing data about sub-zero Fahrenheit temperatures is irrelevant. EPA cannot bootstrap notice from a comment. *The Fertilizer Institute v. EPA*, 935 F.2d 1303, 1312 (D.C. Cir. 1991). By failing to even mention the possibility for a temperature-based waiver, EPA deprived GPA Midstream of the opportunity to comment on such a proposal and explain to EPA what an appropriate temperature threshold might be and whether other waiver provisions might also be required.

Had GPA Midstream been given the opportunity to comment on the potential for waivers for quarterly leak detection monitoring requirements, it would have explained that additional flexibility is required to ensure that quarterly monitoring is feasible and will not endanger worker safety. As an initial matter, limiting the waiver to circumstances where the monthly average temperature of 0° Fahrenheit fails to provide meaningful relief to compressor station operators. First, very few locations in the United States experience sub-zero Fahrenheit average monthly temperatures for two out of three months, particularly when averaged over a three-year period. While one commenter noted that such cold temperatures occur in Nuiqsut, Alaska, EPA-HQ-OAR-2010-0505-6947, GPA Midstream is not aware of any location in the lower 48 states that could meet this standard and allow owners and operators of compressor stations to take advantage of this waiver provision. Moreover, the National Oceanic and Atmospheric Administration ("NOAA") sites used to calculate temperatures may not reflect the actual conditions at remote compressor stations which may be tens of miles from the NOAA monitoring sites and several thousand feet higher in elevation. As a result, the waiver provides no meaningful relief to the vast majority of regulated entities.

Second, a temperature threshold of 0° Fahrenheit is too low to accommodate the equipment EPA has identified for use in conducting leak detection monitoring. In the Final Rule, EPA allows operators to conduct fugitive emissions monitoring using either OGI or Method 21. *See, e.g.*, 81 Fed. Reg. at 35,846. EPA included Method 21 as an alternative method to give operators additional flexibility to continue to use existing equipment rather than purchasing new equipment or hiring new consultants to conduct leak detection monitoring. While EPA asserts in the Final Rule that OGI monitors can be used at temperatures below 0° Fahrenheit, this is not the same for the monitors approved under Method 21. For example, TVA model 1000B from Thermo Environmental Instruments is only certified for use at a temperature of 32° Fahrenheit or higher. Other Method 21 monitors also have temperature certifications at levels above 0° Fahrenheit. In addition, soap bubble monitoring is rendered unusable at temperatures below freezing. Because EPA also requires operators to make certifications regarding the accuracy of their monitoring equipment and the quality of their results, operators cannot use monitoring equipment outside of its certified temperature range. By effectively eliminating these alternative compliance options for cold-weather sites, EPA is eliminating

critical flexibility that will dramatically increase the cost of compliance with the Final Rule and may jeopardize compliance completely if the necessary equipment is not available.

Third, a monthly average temperature threshold of 0° Fahrenheit is far too low to protect the safety of monitoring survey personnel who would be required to spend significant amounts of time outside monitoring all of the required equipment at remote compressor stations. Even when temperatures are above 0° Fahrenheit, survey personnel could experience significant harm from exposure, particularly when wind chill is factored in. As the OSHA chart in Appendix A demonstrates, worker protection must be enhanced significantly as wind speed increases. In particular, exposure periods must be limited, more warm-up breaks are required, and workers must have access to warm locations to accommodate longer-term projects such as leak detection monitoring. Further, providing the necessary protection to workers and limiting their exposure time could significantly increase the amount of time needed to complete leak detection monitoring and EPA has not accounted for the associated costs in evaluating whether quarterly monitoring is cost-effective. In light of these risks, EPA must set an average monthly temperature threshold far above 0° Fahrenheit to adequately protect monitoring personnel at remote, unmanned compressor stations. Thus, GPA Midstream respectfully requests that EPA grant reconsideration with respect on this narrow issue and increase the temperature threshold for the waiver to 32° Fahrenheit.

In addition, EPA's temperature-based waiver does not provide any relief with respect to other circumstances that make leak detection monitoring difficult in inclement weather. Heavy snowpack, storms, and other winter conditions can make monitoring at remote locations impossible, even when average temperatures exceed 0° Fahrenheit. Based on GPA Midstream member's experience with other monitoring and testing crews, to accommodate busy schedules, site visits often must be schedule months when future weather conditions cannot be predicted with any accuracy. Thus, as a practical matter, conducting leak detection monitoring in winter months may prove infeasible due to inclement weather conditions that are only tangentially related to temperature. Thus, had GPA Midstream known that EPA was considering waiver provisions, it could have suggested additional alternatives that would provide more widespread relief. Therefore, GPA Midstream also requests that EPA grant reconsideration to provide additional relief for other inclement weather conditions that limit accessibility and will prevent operators from conducting quarterly monitoring at compressor stations.

B. EPA Must Clarify the Definition of Well Site to Exclude Equipment Owned and Operated by Midstream Pipeline Operators.

EPA must also grant reconsideration and revise the definition of well site to explicitly exclude equipment that is owned and operated by midstream pipeline operators. While certain midstream equipment may be co-located at well sites, such midstream equipment is not part of the production process at well sites and midstream operators should not become subject to leak detection monitoring requirements based on the independent actions of third-party well operators. Moreover, EPA's definition of well sites is vague and ambiguous and could be

interpreted to include equipment located far downstream and geographically separate from the actual well site. EPA must clarify and limit the definition of well site to avoid unnecessary and unwarranted costs on midstream operators.

In the Proposed Rule, EPA included the following definition of “well site”:

Well site means one or more areas that are directly disturbed during the drilling and subsequent operation of, or affected by, production facilities directly associated with any oil well, natural gas well, or injection well and its associated well pad. For the purposes of the fugitive emissions standards at § 60.5397a, well site also includes tank batteries collecting crude oil, condensate, intermediate hydrocarbon liquids, or produced water from wells not located at the well site (e.g., centralized tank batteries).

80 Fed. Reg. at 56,697. In comments on the Proposed Rule, GPA Midstream explained that upstream producers and midstream operators are legally distinct entities and urged EPA to clarify in the final rule that equipment owned and operated by midstream operators would not be subject to well site leak detection monitoring. The comments explained that in some circumstances—based on convenience or necessity—midstream assets may be co-located at well sites. But despite their proximity, GPA Midstream explained that the Clean Air Act did not permit EPA to define a source so broadly that it includes equipment owned and operated by legally distinct entities. GPA Midstream also explained the logistical and legal challenges that would occur if equipment owned and operated by midstream operators were subject to EPA’s well site leak detection monitoring program. GPA Midstream proposed language for the definition of well site that would have fully excluded midstream equipment.

In the Final Rule, EPA made some changes to the definition of well site, but did not address GPA Midstream’s concerns. Specifically, EPA defined well site as follows:

Well site means one or more surface sites that are constructed for the drilling and subsequent operation of any oil well, natural gas well, or injection well. For purposes of the fugitive emissions standards at § 60.5397a, well site also means a separate tank battery surface site collecting crude oil, condensate, intermediate hydrocarbon liquids, or produced water from wells not located at the well site (e.g., centralized tank batteries).

81 Fed. Reg. at 35,936. EPA made the revisions to address what it considered to be unclear language and to respond to comments about the status of centralized tank batteries. *Id.* at 35,861. These changes did nothing to address GPA Midstream’s concerns about the potential inclusion of midstream equipment. In fact, they raise additional, new concerns about the inclusion of midstream equipment because the terms “one or more surface sites” and “subsequent operations” could be read expansively to include equipment that is far downstream and at a separate geographic location from a conventional well pad. Without a clear limit on the scope of a well site, such an interpretation could potentially encompass a significant amount of midstream assets.

Reconsideration is warranted because GPA Midstream was deprived of the opportunity to comment on these new terms and the way that they could potentially be applied to midstream equipment.

Reconsideration is also warranted as a result of EPA's subsequent statements in the Response to Comments document that provide for the first time additional insight into EPA's interpretation of these vague and ambiguous terms. In the Response to Comments document, EPA asserted that "[t]he collection of fugitive emission components at a well site, *regardless of the owner or operator*, is the affected facility and is subject to the fugitive emissions monitoring and repair program requirements specified in §60.5397a" EPA, Response to Public Comments, Chapt. 4: Fugitives Monitoring at 221, EPA-HQ-OAR-2010-0505-7632 (emphasis added). EPA went on to state that, when a third party owned or operated equipment at a well site, it "believe[d] that resolution for any leaking components identified during surveys can be managed by the operator through cooperative agreements with other potential owners at the site." *Id.* Separately, EPA stated that it was "further clarifying the boundaries of a well site for purposes of the fugitive monitoring requirements. Our intent is to limit the oil and natural gas production segment up to the point of custody transfer *to an oil and natural gas mainline pipeline (including transmission pipelines) or a natural gas processing plant*. Therefore, the collection of fugitive emissions components within this boundary are a part of the well site." *Id.* at 194 (emphasis added). These statements announce, for the first time, a new and potentially expansive interpretation of well site that would pose substantial challenges for midstream operators. In addition, this interpretation of custody transfer deviates from EPA's long standing definition used in other New Source Performance Standards ("NSPS") regulations for the oil and gas industry. *See e.g.*, 40 C.F.R. § 60.111b ("Custody transfer means the transfer of produced petroleum and/or condensate, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation."). This definition of custody transfer is well-understood and much better conforms to the where transfer of custody typically occurs. Reconsideration is warranted here because GPA Midstream had no opportunity to comment on this interpretation of well site during the comment period on the Proposed Rule.

While EPA's interpretation correctly focuses on the transfer of custody as a key event in distinguishing a well site from downstream assets, it does so in a way that increases rather than decreases the likelihood that midstream assets will be included within the definition of well site. First, a natural gas mainline pipeline is a term of art used in the natural gas industry for a pipeline that is regulated by the Department of Transportation ("DOT"). The gathering lines operated by GPA Midstream's members are not typically subject to DOT regulation and thus are not considered natural gas mainline pipelines. Moreover, these gathering pipelines typically supply natural gas to processing plants and thus precede the point where natural gas is delivered to a natural gas processing plant. Under this purported interpretation of the definition of well site, a significant amount of midstream equipment might be considered part of the well site, even if it is physically separate and far downstream from an actual well pad. Such an interpretation would ignore entirely the legal distinction between upstream producers and midstream operators, as

well as EPA's longstanding definition of custody transfer in other NSPS regulations. EPA must grant reconsideration and revise the definition of well site to explicitly exclude all equipment owned and operated by all downstream entities, including midstream operators.

Failure to grant reconsideration and revise the definition would pose significant hardship on GPA Midstream's members. First, as a practical matter, midstream operators could become subject to leak detection monitoring requirements based solely on the acts of independent third-party upstream producers. In most cases, upstream producers have no obligation to inform midstream operators if they drill a new well, re-fracture an existing well, or take other action that EPA considers to be a modification or reconstruction. As a result, midstream operators could become subject to leak detection monitoring requirements (and potential enforcement actions) without ever knowing that such an obligation arose.

Second, EPA is incorrect to suggest that midstream operators can simply reach a cooperative agreement with upstream producers to conduct leak detection monitoring and make necessary repairs or replacements. Upstream producers and midstream operators already have complex, negotiated contracts in place that dictate the requirements of each party with respect to the gathering of natural gas, oil, condensate and/or water. It would be a monumental task to revise all of those contracts to include terms to govern leak detection monitoring and repair of fugitive emissions components owned and operated by midstream operators. Even if such cooperative agreements could be reached, EPA's certification requirements would prove problematic because midstream operators would be required to certify leak detection monitoring and repairs that were conducted by legally distinct third parties. Moreover, in many cases, midstream equipment located on well sites is propriety and upstream producers lack the authority to access the equipment to conduct monitoring and repairs. Thus, as a practical matter, it is likely that both upstream producers and midstream operators would have to separately conduct leak detection monitoring at well sites that contain co-located equipment. This would add significant and unnecessary costs to the leak detection monitoring program that EPA has not taken into account. In many cases, such leak detection monitoring may not be cost-effective for midstream operators who may have comparatively few assets located on well sites.

Therefore, GPA Midstream respectfully requests that EPA grant reconsideration and revise the definition of well site to explicitly exclude equipment owned and operated by midstream producers.

C. EPA Should Exclude Compressors from the Definition of Fugitive Emission Components

In the Final Rule, EPA substantially revised the definition of fugitive emission components in response to comments made by GPA Midstream and others. While GPA Midstream agrees that these revisions have improved EPA's regulations and provided some clarity regarding the leak detection monitoring requirements at compressor stations, it is concerned that EPA has included compressors within the definition of fugitive emission

components. *See* 81 Fed. Reg. at 35,934. As a result of this inclusion, compressors are subject to leak detection monitoring, repair and replacement requirements, and all of the other regulations applicable to the leak detection monitoring provisions in the Final Rule. Such regulations are wholly unnecessary because EPA has developed separate regulations in the Final Rule that are specifically designed to address compressors. Indeed, 40 C.F.R. §§ 60.5380a and 60.5385a provide emission reduction requirements for methane and VOC emissions that are directly applicable to centrifugal and reciprocating compressors, respectfully. These provisions are geared specifically for compressors and reflect what, in EPA's judgment, is the best system of emission reduction for compressors. Subjecting those same compressors to more the broadly applicable leak detection requirements for fugitive emission components is redundant at best and could potentially conflict with the compressor-specific requirements in 40 C.F.R. §§ 60.5380a and 60.5385a. Therefore, GPA Midstream urges EPA to grant reconsideration and remove compressors from the definition of fugitive emissions component.

D. EPA Must Clarify that “the Collection of Fugitive Emissions Components” at Compressor Station Sites Are Not Subject to the Reconstruction Notification Requirements of 40 C.F.R. § 60.15.

Finally, GPA Midstream requests that EPA grant this petition for reconsideration to clarify in Table 3 to Subpart OOOOa that the general reconstruction notification requirements in 40 C.F.R. § 60.15 do not apply to “the collection of fugitive emissions components” at compressor station sites. In the Proposed Rule, EPA explained that it was unnecessary for certain sources to comply with the notification of reconstruction requirements in 40 C.F.R. § 60.15(d) because those sources are already subject to specific reconstruction notification requirements in proposed 40 C.F.R. §§ 60.5410 and 60.5420. 80 Fed. Reg. at 56,647. The notification requirements EPA proposed for Subpart OOOOa in 40 C.F.R. §§ 60.5410a and 60.5420a mirror those in Subpart OOOO, rendering the requirements in 40 C.F.R. § 60.15 unnecessary for the same reasons. As a result, EPA proposed to include a reference in Table 3 to Subpart OOOOa specifying that 40 C.F.R. § 60.15(d) did not apply to pneumatic controllers pneumatic pumps, centrifugal compressors, or storage vessels. *Id.* at 56,698.

In response to comments that other sources were subject to the same notification requirements for reconstruction pursuant to proposed 40 C.F.R. § 60.5420a, EPA revised Table 3 in the Final Rule to also provide an exemption for wells and reciprocating compressors. 81 Fed. Reg. at 35,941. GPA Midstream supports these exemptions, but respectfully requests that EPA further revise Table 3 to also provide an exemption for collections of fugitive emissions components at compressor station sites. In both the Proposed Rule and Final Rule, EPA states:

If you own or operate a well, centrifugal compressor, reciprocating compressor, pneumatic controller, pneumatic pump, storage vessel, or collection of fugitive emissions components at a well site or collection of fugitive emissions components at a compressor station, you are not required to submit the notifications required in § 60.7(a)(1), (3), and (4).

80 Fed. Reg. at 56,688 (proposed 40 C.F.R. § 60.5420a(a)(1)); 81 Fed. Reg. at 35,927 (final 40 C.F.R. § 60.5420a(a)(1)). Thus the notification requirements in 40 C.F.R. § 60.5420(a) that EPA relies on for the exemptions in Table 3 apply to all of those sources, including collections of fugitive emissions components at compressor station sites. It would be arbitrary and capricious for EPA to require owners and operators of collections of fugitive emissions components to comply with the notification requirements in 40 C.F.R. § 60.15(d) while exempting other similarly situated sources.

III. EPA Must Stay the Final Rule Pending Reconsideration

Pending reconsideration, the Administrator should stay implementation of the portions of the Final Rule described above that will adversely affect GPA Midstream's members. Specifically, EPA should stay (1) quarterly leak detection monitoring requirements for compressor stations during the fourth and first quarters of each year, (2) any obligation to conduct well site leak detection monitoring for equipment owned by midstream operators, (3) the inclusion of compressors in leak detection monitoring for collections of fugitive emission components, and (4) the requirement to submit reconstruction notification requirements under 40 C.F.R. § 60.15(d) for fugitive emissions components located at compressor stations. Under the Administrative Procedure Act ("APA"), "[w]hen any agency finds that justice so requires, it may postpone the effective date of the action taken by it, pending judicial review." 5 U.S.C. § 705. EPA has applied this standard to Clean Air Act cases.² The standard for an administrative stay is significantly different from the standard for a stay used by the courts because it does not require a demonstration of irreparable harm. This is clear from the text of the APA:

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court . . . may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve the status or rights pending conclusion of the review proceedings.

Id. Thus, the APA deliberately contrasts what is required for an administrative stay—"justice so requires"—and a judicial stay—"conditions as may be required" and "irreparable harm." Similarly, Section 307(d)(7)(B) of the Clean Air Act also authorizes an administrative stay, but does not premise that stay on a finding of irreparable injury. Such differences must be given effect,³ so there is no irreparable harm requirement for an administrative stay.

² See, e.g., *Ohio: Approval and Promulgation of Implementation Plans*, 46 Fed. Reg. 8,581, 8,582 n.1 (Jan. 27, 1981).

³ "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or

Given the potential economic impact of these regulations on gas processors and the significance of the issues addressed above, justice and basic principles of good government require that EPA stay implementation of the portions of the Final Rule for which GPA Midstream is seeking reconsideration until EPA's reconsideration process is complete. The only express condition imposed on EPA's authority to grant a stay under Section 307 of the Clean Air Act is that EPA must have decided to reconsider the rule. As discussed above, the standard for reconsideration is met and it therefore follows that the standard for a stay under the Clean Air Act is also met. Further, in order to avoid significant adverse impacts on GPA Midstream's members of a rule that is arbitrary and capricious, justice requires that implementation of these portions of the Final Rule be stayed while EPA reconsiders and corrects errors in the Final Rule. Thus, the standard under Section 705 of the APA is also met.

While a stay is warranted under the standards established by both the CAA and APA, it would be justified even under the more stringent standard employed by the courts. Courts typically consider four factors in determining whether to grant a judicial stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 129 S. Ct. 1749, 1761 (2009). These factors must be balanced against one another, such that "[a] stay may be granted with either a high probability of success and some injury, or vice versa." *Cuomo v. US Nuclear Reg. Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985). All four factors are satisfied in this case.

First, as described above, GPA Midstream has identified legal, factual, and procedural flaws in EPA's rulemaking process and reconsideration is warranted on the merits.

Second, failure to grant a stay will irreparably harm GPA Midstream's members. For example, as described above, EPA's failure to provide meaningful waivers from quarterly monitoring requirements for cold and other inclement weather will create material health and safety risks for employees and other personnel hired to conduct leak detection monitoring surveys and, if necessary, repair or replace leaking parts. GPA Midstream's members will also suffer irreparable economic harm by being forced to acquire new monitoring equipment, engaging in time consuming leak detection monitoring during inclement weather, by conducting leak detection monitoring at well sites where they own equipment, but are not the site operator, and by complying with duplicative requirements. These harms cannot be remedied by prospective action to revise the Final Rule after granting reconsideration because the necessary costs—and potential harm to employees—will have already been incurred.

Third, there are minimal, if any, offsetting harms to third parties or the public interest from the stay sought by GPA Midstream. As described above, GPA Midstream's members have

exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation marks and citations omitted; alteration in original).

a strong economic interest in reducing methane emissions from their operations and have already taken significant voluntary efforts to reduce such emissions. Thus, temporarily staying the Final Rule while EPA completes the reconsideration process will have little, if any, discernible impact on methane emissions from the gas processing sector. The balance of harms and public interest, thus, favor granting a stay.

Conclusion

For the foregoing reasons, the Administrator must convene a limited proceeding for reconsideration of the Final Rule to address the discrete issues raised by GPA Midstream in this petition.

Respectfully submitted,



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APPENDIX A

Work/Warm-up Schedule for a 4-Hour Shift

Air Temperature--Sunny Sky °F (approximate)	No Noticeable Wind		5 mph Wind		10 mph Wind		15 mph Wind		20 mph Wind	
	Maximum Work Period	Number of Breaks	Maximum Work Period	Number of Breaks	Maximum Work Period	Number of Breaks	Maximum Work Period	Number of Breaks	Maximum Work Period	Number of Breaks
-15 to -19	(Normal Breaks) 1	1	(Normal Breaks) 1	1	75 min	2	55 min	3	40 min	4
-20 to -24	(Normal Breaks) 1	1	75 min	2	55 min	3	40 min	4	30 min	5
-25 to -29	75 min	2	55 min	3	40 min	4	30 min	5	Non-emergency work should cease	
-30 to -34	55 min	3	40 min	4	30 min	5	Non-emergency work should cease		Non-emergency work should cease	
-35 to -39	40 min	4	Non-emergency work should cease		Non-emergency work should cease		Non-emergency work should cease			
-40 to -44	30 min	5	Non-emergency work should cease		Non-emergency work should cease		Non-emergency work should cease			
-45 & below	Non-emergency work should cease		Non-emergency work should cease		Non-emergency work should cease		Non-emergency work should cease			

Schedule applies to any 4-hour work period with moderate to heavy work activity; with warm-up periods of ten (10) minutes in a warm location and with an extended break (e.g. lunch) at the end of the 4-hour work period in a warm location.

Adapted from ACGIH 2012 TLVs