



May 15, 2017

BY ELECTRONIC SUBMISSION

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Re: Recommended Regulatory Reform Priorities for the Environmental Protection Agency  
("EPA") (Docket No. EPA-HQ-OA-2017-0190)

Dear Administrator Pruitt:

Pursuant to Executive Order 13777 ("Enforcing the Regulatory Reform Agenda"), Executive Order 13783 ("Promoting Energy Independence and Economic Growth"), and EPA's Request for Comment dated April 13, 2017,<sup>1</sup> the American Exploration & Production Council ("AXPC") is pleased to submit recommendations for eight regulations and actions appropriate for repeal, replacement, or modification. These comments are also submitted on behalf of the Independent Petroleum Association of America.

AXPC is a national trade association that represents 33 of the largest US independent natural gas and crude oil exploration and production companies - leaders in finding and developing secure energy supplies throughout North America. AXPC's Members are "independent" in the sense that they do not have petroleum refining or retail marketing operations and therefore are not "fully-integrated." The AXPC mission is to work constructively for sound energy, environmental and related public policies that encourage responsible exploration, development and production of natural gas and crude oil to meet consumer needs and fuel our economy.

AXPC strongly supports the Administration's effort to review existing regulations across all government agencies, and EPA in particular. This effort will help EPA focus its limited resources, and those of the businesses it regulates and the communities and families it serves, on activities that advance our shared interest in a healthy environment and a robust economy. Regulatory reform is particularly needed in the energy industry, both to fuel economic growth

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<sup>1</sup> See EPA, *Request for Comment*, 82 Fed. Reg. 17793 (April 13, 2017); see also Office of Management and Budget, Guidance for Section 2 of Executive Order 13783, Titled "Promoting Energy Independence and Economic Growth" (May 8, 2017).



and to ensure our nation’s energy independence and security. Recognizing these needs, the Administration has provided Agencies with a clear mandate to identify existing regulations and other agency actions “that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources.”<sup>2</sup>

Consistent with this mandate, AXPC recommends careful review of the following regulatory programs:

**1. Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015, 40 C.F.R. §60 Subpart OOOOa.**

On June 3, 2016, EPA issued regulations for methane emissions from new, reconstructed, and modified oil and gas facilities, commonly known as the “Methane Rule.”<sup>3</sup> The Rule established New Source Performance Standards (“NSPSs”) for methane emissions at new and modified oil and natural gas facilities. The rule, part of the prior Administration’s “*Climate Action Plan: Strategy to Reduce Methane Emissions*,” imposes costly, burdensome, poorly developed, largely duplicative, and counterproductive regulatory requirements on the oil and gas industry.<sup>4</sup> Since 2012, EPA has regulated VOC emissions from essentially the same set of emission sources and these regulations already sufficiently capture methane emissions from the upstream oil and gas industry.<sup>5</sup>

The new rule is having a significant negative economic impact on American oil and natural gas production. EPA has conservatively estimated that capital cost of the Rule will be \$250 million in 2020 and \$360 million in 2025, and that annualized capital, operating, maintenance, monitoring, reporting, and recordkeeping costs for the rule will be \$390 million in 2020 and \$640 million in 2025.<sup>6</sup> Given that the oil and gas sector represents 1.07% of the national greenhouse gas inventory, and that industry methane emissions have declined 13.3% despite a 400% increase in U.S. shale gas production, there is little to no additional environmental benefit to offset the Rule’s costs.

AXPC was encouraged by the Agency’s April 18, 2017 announcement that it would reconsider portions of the OOOOa rule in the wake of a legal challenge, and it echoes the

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<sup>2</sup> E.O. 13783 at Sec. 2.

<sup>3</sup> EPA, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule*, 81 Fed. Reg. 35824 (June 3, 2016).

<sup>4</sup> The Administration revoked the Climate Action Plan on March 28, 2017. See E.O. 13783 at Sec. 3.

<sup>5</sup> 77 Fed. Reg. 49490 (Aug. 16, 2012).

<sup>6</sup> 81 Fed. Reg. at 35886. AXPC believes these estimates could understate the impacts, both on energy jobs and the broader economy.



concerns raised by the Petitioners that sought reconsideration under the Clean Air Act.<sup>7</sup> The flaws contained in the OOOOa rule, however, go beyond the issues identified in the Agency's reconsideration letter.<sup>8</sup> Given these flaws, AXPC recommends EPA take the following action:

- **Repeal or rescind the OOOOa rule in its entirety.** The Methane Rule's costly and burdensome requirements are unnecessary given regulatory requirements in place at the state and federal level. EPA has already established broad New Source Performance Standards to address VOC emissions from oil and gas facilities, and these federal standards already address methane emissions.<sup>9</sup> State regulations, moreover, largely regulate the same sources.<sup>10</sup> Requiring duplicative regulation provides no benefit to the environment while harming our nation's economy. The rule should be rescinded.

If EPA chooses not to repeal the regulation in its entirety, it should, at minimum, incorporate the following modifications:

- **Focus any New or Revised Rule on VOC emissions.** EPA's 2012 Subpart OOOO rule targets VOC emissions but, in the process, also captures methane emissions.<sup>11</sup> To the extent there are gaps in the existing regulation of VOC emissions from upstream oil and gas production, those should be remedied through revisions to OOOO. Methane is not a pollutant expressly regulated by the Clean Air Act.
- **Reestablish the LDAR Exemption for Low Production Well Sites.** For marginal wells producing at levels below 15 barrels of oil equivalent (BOE), the lower well-head pressure significantly reduces the potential to emit fugitive emissions. At the same time, the lower production levels at these sites do not support the significant cost associated with compliance with the Methane Rule LDAR requirements, forcing premature closures at many well sites. The original proposal included an exemption to the LDAR requirements for equipment at low-production well sites but it was omitted from the final

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<sup>7</sup> See *State of North Dakota v. EPA*, Case No. 16-1242, D.C. Cir. (filed July 15, 2016); Letter to H. Feldman et al., re: Convening a Proceeding for Reconsideration of Final Rule, "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed and Modified Sources" (April 18, 2015).

<sup>8</sup> For more detail on AXPC's concerns and the rule's flaws, AXPC is enclosing, as Exhibit A to this letter, comments submitted on December 4, 2015, regarding the proposed rule. IPAA/AXPC, *Comments for Three Regulatory Proposals issued September 18, 2015: 1) Oil and Natural Gas Sector: Emission Standards for New and Modified Sources (80 Fed. Reg. 56,593) 2) Release of Draft Control Technique Guidelines for the Oil and Natural Gas Industry (80 Fed. Reg. 56,577) 3) Source Determination for Certain Emission Units in the Oil and Natural Gas Sector (80 Fed. Reg. 56,579)*(Dec. 4, 2015).

<sup>9</sup> See 40 C.F.R. §60.5360-.5430 (*Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015*).

<sup>10</sup> See 81 Fed. Reg. 35871. See, e.g., WY Stat § 35-11-80 (2015) and Colorado Oil & Gas Industry Regulation 7, CDPHE Regulation 7 (Feb. 2014).

<sup>11</sup> 77 Fed. Reg. 49490.

rule.<sup>12</sup> This exemption should be reinstated and incorporated into the rule for low production well sites. The term “Low Production Well Sites” should be clarified and defined as “Sites with average combined oil and natural gas production below 15 barrels of oil equivalent (BOE) per day averaged over the first 30 days of production.”

- **Create an Off-Ramp for Wells that Decline in Productivity over Time.** Even high production wells will decline in productivity over time, and, absent relief, the burden and cost of compliance with the Methane rule will cause premature closure of many marginal wells that could still provide much needed oil and gas with little risk of fugitive emissions. In addition to including an up-front exemption for Low Production Well Sites, the rule should be revised to include an explicit “Off-Ramp” exemption from the LDAR requirements for high producing wells sites that subsequently decline in production to below 15 BOE.
- **Eliminate Burdensome Reporting Requirements.** The rule includes extensive reporting requirements, which compound the burden already imposed by the monitoring requirements, work practice standards and restrictions.<sup>13</sup> Such paperwork exercises increase the cost and burden of compliance, while providing no health or environmental benefits. EPA should eliminate these reporting requirements, substituting reasonable recordkeeping requirements where absolutely necessary.
- **Simplify State Equivalency Standards.** The preamble to the Methane Rule acknowledges that “[i]n recent years, certain states have developed programs to control various oil and gas emission sources in their own states.”<sup>14</sup> Yet, the standards and substantiation requirements EPA has developed to demonstrate equivalency are extremely burdensome and complex, making it difficult for operators to escape dual regulation.<sup>15</sup> EPA should simplify the state equivalency requirements and determination process to allow compliance with state programs in lieu of compliance with duplicative federal requirements.
- **Simplify the Process for Demonstrating Equivalency of “Emerging Technologies” for Leak Detection and Reduction.** As EPA has acknowledged, the field of fugitive emissions detection is expanding and advancing rapidly, offering a steady stream of new and far less expensive technologies for monitoring, detecting, and reducing leaks and fugitive emissions in the field.<sup>16</sup> The current Methane Rule establishes a process for reviewing and approving such innovative technologies, but the cost, burden, and complexity of the application and review process is a significant barrier to

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<sup>12</sup> See 80 Fed. Reg. 56593, 56612 (Sept. 18, 2015).

<sup>13</sup> See *id.* §60.5420a; *id.* § 60.5422a.

<sup>14</sup> See 81 Fed. Reg. 35871.

<sup>15</sup> See *id.* §60.5398a.

<sup>16</sup> 81 Fed. Reg. 35860-35861.

commercialization and adoption of alternative technologies. Under EPA’s current process the applicant must submit a detailed application package for each proposed alternative technology, EPA must seek public notice, and then EPA reserves to itself up to six months to make a determination.<sup>17</sup> EPA’s rules should encourage and incentivize such innovations and efficiencies, not discourage them. EPA should revise, streamline, and expedite the alternative technology review process to make it quicker, simpler, and more predictable.

- **Eliminate Requirement for Certification by a Professional Engineer.** In many cases, the rule requires a professional engineer to certify a facility’s compliance with the regulation.<sup>18</sup> This is unnecessary. Many of the highly competent staff used by operators to manage regulatory compliance are not Professional Engineers, as the work does not require this level of specialized training or credential. Requiring operators to hire or retain Professional Engineers for basic compliance certifications merely increases the cost of compliance, and, in many cases, requires companies to pay for outside consultants without any commensurate health or environmental benefit. Remove the requirement that compliance certifications for pneumatic pumps and other covered systems and equipment be conducted by certified engineers.
- **Exempt Unmodified Refractured Wells:** Well refracturing, in and of itself, does not cause an increase in emissions and should not be treated as a modification triggering coverage under the Methane Rule. The current regulation exempts refractured wells from portions of the Methane Rule but includes such wells in other places.<sup>19</sup> EPA should clarify that wells that are refractured without modification or installation of equipment are not modifications under Subpart OOOOa and, thus, are not subject to any portion of the Methane Rule.

## 2. EPA Control Technique Guidelines (“CTGs”) for the Oil and Natural Gas industry.

On October 20, 2016, EPA issued final CTGs for use by state and local air agencies in managing volatile organic compound (VOC) emissions from existing oil and natural gas facilities and equipment in ozone nonattainment areas.<sup>20</sup> These guidelines were modeled after the OOOOa Rule, which requires new and modified sources to adopt “Best Available Control Technology” (“BACT”) to address methane emissions.

The CTG is flawed on multiple levels. First, by mirroring the Methane Rule, the CTG contains many of its underlying flaws. These flaws, and the broader burden imposed by the rule,

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<sup>17</sup> 81 Fed. Reg. 35860-35861.

<sup>18</sup> *Id.* § 60.5393a; *id.* § 60.5411a.

<sup>19</sup> *See, e.g.* 40 C.F.R. § 60.5365a(i).

<sup>20</sup> EPA, *Control Techniques Guidelines for the Oil and Natural Gas Industry*, EPA-453/B-16-001 (October 2016)(“OG CTGs”).



are magnified when applied to existing sources, for which the Clean Air Act mandates “Reasonably Available Control Technology” (“RACT”) - not the more onerous BACT requirements.<sup>21</sup> The CTG wholly fails to meet the test of identifying “control technology that is reasonably available considering technological and economic feasibility.”<sup>22</sup>

The CTG would impose significant new costs on the oil and gas industry at a time when the President has directed Agencies to comply with federal statutory mandates, but to do so in a manner that encourages, not hinders, domestic energy production. The CTG, as currently drafted, fails to accomplish this mandate. Indeed, while EPA declined to conduct a complete regulatory impact analysis on the guidelines, its own informal analysis concluded that state implementation of the guidelines would result in \$390 million in capital costs and annual costs of \$100 million.<sup>23</sup> Given the limited remaining useful life of many existing facilities subject to regulation, the guidelines are even more unreasonable, and will likely force many facilities to close. In light of these flaws, AXPC provides the following recommendations:

- **Withdraw and Replace the Current CTG.** EPA should withdraw its CTG and replace it with guidance that properly analyzes the appropriate level of emission control based on a full RACT analysis.
- **Address Flaws Transferred from the Methane Rule.** Because the current CTG largely mirrors the structure of the Methane Rule, it contains many of the same fatal flaws. Should the Agency deem it necessary to retain some or all of the current CTG, it should, at a minimum, address the issues AXPC identified above in its discussion of the Methane Rule.

### **3. EPA, Greenhouse Gas Reporting Rule; Subpart W – Petroleum and Natural Gas Systems, 40 C.F.R. §98.230-.238.**

On November 30, 2010, EPA issued a final rule requiring monitoring and reporting of greenhouse gas emissions from petroleum and natural gas systems (“GHGR Rule”).<sup>24</sup> In November 2010, EPA estimated that 2,786 entities would be covered by Subpart W of the rule, and that total annualized costs incurred under the rule by these entities would be \$61.8 million for the first year and \$19.0 million for subsequent years.<sup>25</sup> As the rule has evolved over time, the

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<sup>21</sup> 42 U.S.C. §7501(c)(1).

<sup>22</sup> 44 Fed. Reg. 53761 (Sep. 17, 1979).

<sup>23</sup> EPA, *Final Control Techniques Guidelines for Reducing Smog-Forming Volatile Organic Compounds from the Oil and Natural Gas Industry: Fact Sheet* (undated). AXPC believes that EPA’s figures significantly underestimate the actual costs of compliance.

<sup>24</sup> 75 Fed. Reg. 74458 (Nov. 30, 2010), codified at Subpart W to 40 C.F.R. § 89.

<sup>25</sup> See EPA, *Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Under Subpart W Final Rule (GHG Reporting): Final Report* (November 2010). AXPC believes that these estimates significantly underestimate the burden and cost associated with the rule.

reporting requirements have become increasingly onerous, and many of the changes provide little to no practical environmental benefit. Most recently, shortly before the close of the prior Administration, EPA revised the rule to impose new monitoring methods, emission factors for use in assessing equipment leakage, and more onerous reporting requirements.<sup>26</sup> AXPC recommends the following modifications to the rule:

- **Decouple the GHGR Rule from the Methane Rule LDAR Requirements.** The current GHGR Rule cross-references extensively to the 2016 Methane Rule, 40 C.F.R. §60 Subpart OOOOa, making it far more difficult to decipher, raising the cost for compliance, and forcing respondents to use multiple calculation methodologies to report fugitive emissions. As discussed above, the Methane Rule is fundamentally flawed in terms of its assumptions, design, and requirements, and will need to be significantly revised, if not repealed. By relying on and incorporating the Methane Rule by reference, EPA’s GHGR Rule compounds and extends these flaws to the greenhouse gas reporting program. Given the problems with the Methane Rule, its uncertain future, and the confusion caused by cross referencing the two rules, EPA should decouple the GHGR Rule from the methane rule and adopt a stand-alone set of consistent methodologies for measuring and reporting GHG emissions.
- **Eliminate Reliance on Incomplete and Outdated “Leaker Emissions Factors” that Overstate Fugitive Emissions.** Despite EPA’s own data and comments from industry providing notice of more up-to-date information, the current rule relies on 20-year old data that is no longer representative of industry operating practices and procedures. For example, EPA’s Uinta Basin study and the OIPA study show much lower emissions factors for pneumatic controllers.<sup>27</sup> Current data should be used in lieu of outdated emission factors that overstate emissions to justify overly burdensome regulations and inflated cost-benefit analyses. A stakeholder process for industry to provide additional details of more current and accurate data and to participate in the development of more accurate emission factors and calculation methods will add further value to the GHGR Rule.
- **Exclude Blowdown Emissions from the Gathering & Boosting Sector from Emissions Monitoring Requirements.** In 2016, blowdown emissions were estimated to constitute 0.002% of one of our member’s total reported gathering and boosting emissions, but companies must still dedicate significant amounts of money, staff-time,

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<sup>26</sup> 81 Fed. Reg. 96490 (11/30/2016).

<sup>27</sup> See, e.g., Beeler, C. AND E. Thoma. *Uinta Basin Pneumatic Controller Research Project: Industry meeting slides*, Presented at Webinar, RTP, NC (February 26, 2016), [https://cfpub.epa.gov/si/si\\_public\\_record\\_report.cfm?dirEntryId=321852](https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=321852); Oklahoma Independent Petroleum Association, *Pneumatic Controller Emissions from a Sample of 172 Production Facilities, November 2014*, *Pneumatic Controller Emissions from a Sample of 172 Production Facilities (Nov. 2014)*, [http://www.oipa.com/page\\_images/1418911081.pdf](http://www.oipa.com/page_images/1418911081.pdf).

and training to comply with data collection and reporting requirements. Gathering and boosting facilities are not typically manned like a gas processing plant or transmission compressor station, making the burden of data collection particularly onerous. Blowdown emissions from these facilities should be excluded from the monitoring and reporting requirements.

- **Eliminate Requirements to Report Data by Well ID number.** In a classic case of needless bureaucratic overreach, the GHGR includes dozens of reporting provisions requiring companies to cite and cross reference test data and specific pieces of equipment to the applicable Well ID's, often further cross-referenced by sub-basin. *See* 40 C.F.R. § 98.236. Requirements to collect, collate, and report Well ID numbers provide absolutely no value from an analytical or environmental perspective, but raise the rule's cost and burden significantly, requiring staff to track down and enter duplicative data on thousands of wells and pieces of equipment. The requirement to report Well ID information is unnecessary and onerous, and should be repealed.

#### 4. Clean Water Rule: Definition of “Waters of the United States,” 40 C.F.R. § 230.3.

On February 8, 2017, the President signed an Executive Order directing EPA and the Army Corps of Engineers (“Corps”) to consider rescinding or replacing the Obama Administration’s 2015 Rule expanding the scope and definition of the terms “Waters of the United States” and “navigable waters,” as used to determine federal jurisdiction under the Clean Water Act (“WOTUS Rule”).<sup>28</sup> The Executive Order further directed EPA and the Army Corps to “consider interpreting the term ‘navigable waters,’ as defined in 33 U.S.C. § 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).”<sup>29</sup> In keeping with this Presidential Directive, on March 6, 2017, EPA published a Notice of Intention stating its intent to initiate rulemaking to carry out the mandate in the Executive Order and EPA’s intent to apply the Scalia test to any updated rule.<sup>30</sup> AXPC supports EPA’s intent to use the “Scalia Test” as the standard and believes that any action to repeal and replace the current regulation should put this test into place immediately. AXPC understands, however, that some EPA officials have suggested that EPA may adopt a “two-step” process for “repeal and replace,” with step one being reversion to the 1986 definition of “Navigable Waters ” and interpretive guidance issued in 2008 (“2008 Guidance”), and step two

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<sup>28</sup> Executive Order 13778, *Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule* (Feb. 28, 2017)

<sup>29</sup> *Id.*

<sup>30</sup> EPA, Corps, *Intention To Review and Rescind or Revise the Clean Water Rule*, 82 Fed. Reg. 12532 (March 6, 2017). Under the Scalia Test, “only those wetlands with a continuous surface connection to bodies that are ‘waters of the United States’ in their own right, so that there is no clear demarcation between ‘waters’ and wetlands, are ‘adjacent to’ such waters and covered by the Act. Wetlands with only an intermittent, physically remote hydrologic connection to ‘waters of the United States’ . . . lack the necessary connection to covered waters . . .” *Rapanos*, 547 U.S. at 742.



being a subsequent rule codifying the Scalia Test.<sup>31</sup> AXPC believes that this would be a mistake. AXPC recommends that:

- **Any Rule Repealing the Current WOTUS Rule Should Reject the 2008 Guidance and Cite to the Plurality Opinion in the *Rapanos* Case for the Governing Standard.** Both the Executive Order and EPA’s Notice of Intent articulated support for Justice Scalia’s plurality holding, which established a “continuous surface connection” test for determining the scope of navigable waters. The 2008 Guidance, however, largely dismissed Justice Scalia’s limited “continuous surface connection” test in favor of a more expansive “significant nexus” test proffered by Justice Kennedy in a separate concurring opinion.<sup>32</sup> Given that the Justice Scalia’s plurality opinion expressly rejected the Kennedy Test, defaulting to guidance that endorses that faulty test would be contrary to the Administration’s goals and would simply replace one bad policy for another.<sup>33</sup> There is no reason why any rule to repeal the current WOTUS regulation cannot repeal or overrule a nonregulatory guidance document and establish the correct test, which has already been articulated by the Supreme Court.

## **5. Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector, 40 C.F.R. §§ 49.101 - 49.120.**

On June 3, 2016, EPA finalized a Federal Implementation Plan establishing permitting requirements for “Minor Source” oil and natural gas production and natural gas processing facilities located in Indian Country.<sup>34</sup> The FIP Rule established enforceable requirements for the control and reduction of emissions of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter, hydrogen sulfide, carbon monoxide and various sulfur compounds from a wide variety of wells and equipment used in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector. The FIP Rule made a variety of other amendments to the Federal permitting requirements applicable to oil and gas Minor Sources in

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<sup>31</sup> EPA, *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision In Rapanos v. United States & Carabell v. United States* (December 2, 2008) at 2-5, 9).

<sup>32</sup> *Id.* at 3. (“Thus, regulatory jurisdiction under the CWA exists over a water body if either the plurality's or Justice Kennedy's standard is satisfied.”). Since the broad scope of Justice Kennedy’s “significant nexus” test subsumes Justice Scalia “continuous surface connection” test, it is more correct to state that EPA rejected Scalia’s plurality opinion. *See id.* (“Justice Scalia emphasizes that relatively permanent waters do not include tributaries ‘whose flow is “coming and going at intervals . . . broken, fitful,”’ . . . [h]owever, CWA jurisdiction over these waters will be evaluated under the significant nexus standard described below.”)(internal footnotes omitted).

<sup>33</sup> *See id.*

<sup>34</sup> EPA, *Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country To Address Requirements for True Minor Sources in the Oil and Natural Gas Sector; Final Rule*, 81 Fed. Reg. 35944 (June 6, 2017) (“FIP Rule”).

Indian Country. We recommend the following modifications to the rule to reduce the regulatory burden and realign the rule with EPA’s core authority and mandate under the Clean Air Act:

- **Revoke Documentation Requirements relating to Endangered Species Act (“ESA”) and National Historic Preservation Act (“NHPA”) Compliance.** The current rule requires facility owners to submit documentation demonstrating that the applicant has completed any analysis, consultation, or screening requirements required under ESA and NHPA prior to obtaining a Minor Source NSR permit.<sup>35</sup> This requirement is inconsistent with the Agency’s own acknowledgment that “EPA considered [ESA and NHPA] issues regarding listed species and historic properties” in developing the FIP, and that “individual coverage of each source that would operate under the FIP would *not* constitute a separate triggering action for ESA or NHPA purposes.”<sup>36</sup> Moreover, as many commenters noted during the comment period to the proposed FIP, EPA lacks the authority under the Clean Air Act to impose gratuitous supplemental reporting and documentation requirements related to two entirely separate statutes – particularly where, as here, the Agency has conceded further analysis is unnecessary under the statutes. The requirement to separately document compliance with ESA and NHPA requirements as part of the Clean Air Act FIP permitting process should be repealed.
- **Consolidate Part 1 and Part 2 Minor Source Registrations into a Single Post-Construction Registration.** The current FIP requires that permit applicants submit two separate registration forms – one form 30 days prior to commencing construction and a second form within 60 days after startup of production.<sup>37</sup> This bifurcation of the registration process, particularly the requirement for preconstruction registration, imposes an additional cost and paperwork burden on permit applicants while doing nothing to improve the permitting process or advance the Agency’s environmental protection mandate. EPA should eliminate the current two-step registration process and replace it with a single post-construction registration.
- **Remove Provisions Allowing Regulators to Impose Source-Specific Permitting Requirements.** Having established a broadly-applicable minor source permitting process for covered minor sources, the FIP rule grants “Reviewing Authorities” broad discretion to “require a source to obtain a source specific permit”; “regulate emission from operations at the minor source not regulated by the FIP”; and “require more stringent emissions limitations for operations at the source than would be required by the FIP.”<sup>38</sup> The unfettered discretion granted by this policy will have a chilling effect on investment into just the kinds of low-emissions projects that EPA should support, increasing the business uncertainty permit applicants face and making them vulnerable to the whims of

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<sup>35</sup> See 40 C.F.R. §49.104.

<sup>36</sup> 81 Fed. Reg. at 35959 (emphasis added).

<sup>37</sup> 40 C.F.R. §160(c)(1)(iv).

<sup>38</sup> 82 Fed. Reg. at 35946.

individual regulators. Having established a detailed permit application and review process under National FIP, EPA should prohibit individual Reviewing Authorities from disregarding the FIP in favor of more burdensome source-specific requirements.

- **Apply the National FIP until Area or Reservation-Specific FIPs are in Place.** To the extent that EPA continues to allow Reviewing Authorities to impose restrictions more stringent than those established under the National FIP, no Regulatory Authority should be able to impose such requirements without first going through the entire FIP-development process to develop an area or reservation-specific FIP. EPA should clarify and confirm that the current National FIP applies in areas officially designated nonattainment for ozone until a reservation/area-specific FIP is finalized.
- **Provide for Synthetic Minor Source Permitting within the FIP.** Despite receiving comments from stakeholders requesting that the FIP provide simplified permitting mechanisms for synthetic minor sources (*i.e.*, sources that agree to enforceable emissions caps below levels that would trigger major source treatment), EPA declined to address this need, leaving applicants seeking coverage under a synthetic minor permit subject to more onerous permitting requirements.<sup>39</sup> EPA should allow applicants for synthetic minor sources to use the same procedures established for true minor sources.

## 6. Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category, 40 C.F.R. Part 435.

In June 2016, EPA issued a pre-treatment standard establishing a zero-discharge limitation for discharges of pollutants to publicly-owned treatment works (“POTWs”) from unconventional oil and gas facilities.<sup>40</sup> This rule effectively precludes discharges to POTWs, eliminating a potential treatment option for produced water generated through unconventional oil and gas extraction activities. In justifying this restriction, EPA relied on a flawed analysis of the Clean Water Act’s anti-backsliding provision, a flawed and inadequate analysis of current industry practice, and disregard for the constantly-changing economic and technical factors affecting the industry’s disposal options and decisions. EPA also improperly concluded that the new regulation would have no cost to the industry.

While many, if not most, facilities may dispose of waste water through underground injection or other methods at present, disposal to POTWs remains an important option which could prove preferable or necessary if current disposal options become economically or technically infeasible. Conversely, future innovations could make disposal to POTWs technically, economically, or even environmentally *preferable* to underground injection and

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<sup>39</sup> 81 Fed. Reg. 3598.

<sup>40</sup> EPA, *Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category; Final Rule*, 81 FR 41845, 41847 (June 28, 2016).

direct release. The current policy stifles such technological innovation. These impacts have real costs for an industry that must constantly adjust to changing economic and physical conditions at its facilities.

EPA's current policy also has dubious environmental and social benefits – especially in parts of the country where water is scarce. Injection in Class II Injection Wells removes produced water from the hydrogeologic cycle entirely, denying communities access to a precious commodity, creating an even greater strain on ground and surface water sources.

Finally, the rule puts oil and gas facilities at a disadvantage relative to other industrial sectors where POTWs pre-treatment standards have been established for wastewater. EPA provides no reasonable basis for this inequitable treatment, offering only a conclusory assertion that produced water can contain dissolved solids and other materials that, under certain conditions, can be difficult to manage at a POTW. This rationale, if applied more generally, would prohibit the discharge of *any* water source to a POTW. EPA should not be able to single out unconventional oil and gas' wastewater from other industrial wastewaters without first identifying and analyzing a single pollutant of concern. Given the fundamental flaws in EPA's prior analysis, AXPC recommends that EPA:

- **Establish a Technically Feasible Pre-Treatment Standard.** EPA should repeal its current zero-discharge pre-treatment standard and replace it with a standard that would allow for the use of disposal to POTWs where other options are economically or technically infeasible.
- **Analyze the Unique Constituents in Produced Water and Justify Regulation of Those Constituents.** To the extent that EPA has specific concerns regarding pollutants unique to unconventional oil and gas wastewater (beyond concerns for total suspended solids), EPA should identify the specific pollutants of concern and establish appropriate pre-treatment standards based on a science-based risk analysis.
- **Address Common Pollutants in a Common and Equitable Manner.** If EPA believes that a dissolved solid pre-treatment standard is necessary to protect POTWs, it should establish an effluent guideline limitation for dissolved solids that would apply to all industries, not just the oil and gas sector. If EPA is concerned about total dissolved solids, for example, it can identify an upper limit for TDS (pre-treatment) to ensure it doesn't pass through POTW treatment.<sup>41</sup>

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<sup>41</sup> This would be ensured on the back end with the establishment of an ELG for dissolved solids or through an individual NPDES permit

## 7. Spill Prevention, Control, and Countermeasure (SPCC) Regulation, 40 CFR 112.7.

EPA requires oil and gas facilities to establish extremely detailed spill prevention, control, and countermeasure plans for every facility.<sup>42</sup> While the concept of spill prevention, control, and countermeasure planning is an important one, the regulatory framework EPA has put in place has become more of a paper exercise than a meaningful planning requirement, with EPA requiring companies to essentially “reinvent the wheel” for every location, despite the fact that many elements of a SPCC analysis for an oil and gas Company will be the same from one site to the next. Companies with multiple (sometimes hundreds) of different “facilities” should be able to focus their site-specific SPCC planning process on the elements of the plan which are truly site specific, while recognizing that other policies and procedures will apply across different facilities. Consistent with E.O. 13777’s mandate to identify regulations that are outdated, unnecessary, or ineffective, EPA should review the SPCC Regulation to identify opportunities to reduce the burden of SPCC plan development and updating, allowing companies to focus updates on the aspects of the site (emergency contact information, site maps, etc.) that are truly unique to each location. EPA recommends that EPA:

- **Review the Current SPCC Plan General Requirements to Identify and Reduce Unnecessary and Duplicative Reporting Requirements.** EPA should look for opportunities to streamline the SPCC planning process as applied to the oil and gas industry, retaining the elements of the program that facilitate meaningful, site-specific planning and preparedness activities while eliminating redundant elements of the planning process. AXPC would be pleased to provide more detailed examples of such streamlining opportunities upon request.

## 8. EPA’s 2016 Research Grant for Oil and Gas Development in the Appalachian Basin.

On September 22, 2016, EPA announced a new solicitation for \$2 million in research grants to “promote research that fills in gaps in the understanding of the potential impacts of OGD on human health and the environment.”<sup>43</sup> While EPA acknowledged that “development of the Marcellus and Utica Shales has had significant economic impact at local, regional, and national spatial scales” the solicitation cited the need to assess the “impacts—both positive and negative—to the environment, communities, and individuals near locations where OGD occurs.” This grant is unnecessary, as extensive data already exists in the literature regarding the impact of economic development in the Appalachian basin. Indeed, the Administration has emphasized that promoting economic development within the Appalachian basin is a top priority. Moreover, EPA just completed a 6-year, \$30 million study on hydraulic fracturing, and other privately funded research organizations are conducting research on the health and environmental impacts

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<sup>42</sup> 40 C.F.R. 112.7.

<sup>43</sup> See EPA, *Oil and Gas Development in the Appalachian Basin: Funding Opportunity EPA-G2016-ORD-DI*, [https://cfpub.epa.gov/ncer\\_abstracts/index.cfm/fuseaction/display.rfatext/rfa\\_id/625#Synopsis](https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/display.rfatext/rfa_id/625#Synopsis).



of unconventional oil and gas activities.<sup>44</sup> Based on these findings, AXPC recommends that EPA:

- **Withdraw the Grant.** Withdraw or discontinue this grant program and redirect the federal funding to other, more critical scientific or policy priorities.
- **Refocus the Grant.** If EPA is unwilling or unable to withdraw this grant program in its entirety, it should refocus the grant on opportunities to advance economic development through investment in energy infrastructure rather than conducting studies that repeat work EPA has already funded.

We appreciate the opportunity to raise these important regulatory reform needs and look forward to working with you and your staff to operationalize these and other reforms. Because much of EPA's work, like our industry, involves highly technical and complex issues, please do not hesitate to reach out for further clarification and detail on these or other Agency priorities affecting the oil and gas industry.

Please contact me at 303-638-7979 if you have any questions regarding this filing.

Sincerely,

A handwritten signature in blue ink that reads "V. Bruce Thompson".

V. Bruce Thompson  
President  
American Exploration & Production Council

Enclosure

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<sup>44</sup> See e.g., U.S. EPA, *Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States (Final Report)*, EPA/600/R-16/236F (Dec. 2016); Health Effects Institute, *Unconventional Oil & Natural Gas*, <https://www.healtheffects.org/unconventional-oil-natural-gas>.