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VIA E-FILING

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
EPA Docket Center, Docket ID No. EPA-HQ-OAR-2021-0317

Federal eRulemaking Portal (https://www.regulations.gov/)

Re: Comments of the Ohio Oil and Gas Association on U.S. EPA's Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review

Docket ID No. EPA-HQ-OAR-2021-0317

Dear Administrator Regan:

On November 15, 2021, the U.S. Environmental Protection Agency ("U.S. EPA") published the proposed rule[1], "Standards of Performance for New, Reconstructed, Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (the "Proposed Rule"). 86 FR. 63110. The Ohio Oil and Gas Association ("Association" or "OOGA") appreciates the opportunity to submit the following comments on the Proposed Rule.

INTRODUCTION

OOGA is one of the largest and most active state-based oil and natural gas associations in the United States and has been the representative of Ohio's oil and gas producing industry since 1947. OOGA's members are involved in all aspects of the exploration, development, production and marketing of crude oil and natural gas resources in Ohio. The Association's members often rely on OOGA as their primary source of information on industry trends, activities, tax changes, legislation and regulatory issues. OOGA frequently participates in federal and state regulatory actions affecting the oil and gas industry.

[1] The Association notes that, while U.S. EPA's action is characterized as a "proposed rule", that which was published in the *Federal Register* contained no proposed regulatory language. U.S. EPA's action is, at best, an "advanced notice of proposed rulemaking."

OOGA writes to express its significant concerns regarding U.S. EPA's Proposed Rule. Many of the Association's members have operations that will be subject to and directly affected by the Proposed Rule, with many others indirectly affected.

While OOGA supports responsible regulations along with efforts to improve air quality and protect public health, the Proposed Rule imposes significant and unnecessary regulatory burdens on the oil and gas industry that will result in substantial compliance costs, particularly for small Ohio producers, and have sweeping consequences for the state of Ohio. The economic ramifications from a rulemaking that threatens the continued development of oil and natural gas in Ohio cannot be ignored as the industry generated approximately $93 Billion in investments since 2011[2], and contributes to more than 208,000 Ohio jobs[3].

Concerned with the impacts of misguided regulations on Ohio's oil and gas industry, OOGA submits the following comments on select aspects of the Proposed Rule and hereby supports, adopts, and incorporates by reference herein the comments submitted by the Independent Petroleum Association of America and supporting Producer Associations.

SPECIFIC COMMENTS

A. U.S. EPA's proposed requirements for fugitive emissions from well sites and compressor stations are overly burdensome and unreasonable

The Association's members have made significant investment to comply with New Source Performance Standards (NSPS) Subpart OOOO and Subpart OOOOa requirements. This investment has already resulted in substantial reductions in emissions of volatile organic compounds (VOCs) and methane from well sites and compressor stations, and related equipment. U.S. EPA should acknowledge this investment and the resulting emissions reductions as it considers the need for additional and more stringent requirements from such new and modified sources (i.e. Proposed Rule, Subpart OOOOb). Likewise, U.S. EPA needs to consider these reductions to accurately evaluate the need to develop Emission Guidelines (EG) for existing sources which, U.S. EPA has made clear under the Proposed Rule (Subpart OOOOc), must be essentially the same as the requirements for new and modified sources. OOGA has several concerns with the Proposed Rule's requirements for fugitive emissions from well site and compressor station "affected facilities" and "designated facilities".

1. <u>The exemption for low production wells should be maintained</u>

OOGA objects to U.S. EPA's is proposal to remove the exemption (from the requirement to monitor fugitive emissions) for low production wells from Subpart OOOOa. 286 FR 63170 and urges U.S. EPA to retain the exemption for low-production wells. A significant portion of the 61,000+ wells in Ohio meet the definition of a low production well (i.e. produce at or below 15 barrels of oil equivalent per day) and, in fact, produce on average far less than 15 boe/day. Notwithstanding the Association's objection to removing the exemption for low production wells, U.S. EPA's proposed site-level baseline methane estimate methodology to determine whether a well site is subject to the fugitive emissions monitoring requirement is flawed for several reasons.

[2] https://www.jobsohio.com/wp-content/uploads/2021/12/Energy-Brochure-HighRes-EC1221.pdf
[3] https://ohiolmi.com/Home/Ohioshale

2. The proposed site-level baseline methane emission estimate methodology is unworkable and results in an overestimate of emissions

    a. "Fugitive emissions component" improperly defined

U.S. EPA's proposed methodology is flawed largely due to its proposed definition of "fugitive emissions component". As defined under the Proposed Rule, a "fugitive emission component" includes emissions from non-regulated sources and emissions from malfunctioning controllers and control devices. OOGA objects to the inclusion of emissions from non-regulated sources and malfunctioning controllers and control devices. Relatedly, OOGA requests that U.S. EPA exclude safety equipment (e.g. pressure relief valves), which only emit out of necessity in an emergency situation, from the definition of "fugitive emissions component". It is unclear whether such emissions are treated as "malfunctioning controllers" under the Proposed Rule. Regardless, safety equipment are integral and necessary components and the activation of such equipment resulting in emissions should not be treated as a malfunction nor otherwise regulated and included in the baseline methane emission estimate.

EPA's proposed approach will create recordkeeping challenges since malfunctioning controllers and control devices would not be included in a site's Potential to Emit (PTE) calculation as directed by New Source Review (NSR) permitting purposes [4]. This essentially forces a company to create two 'sets of books' which is unduly burdensome and will ultimately create more confusion with permitting agencies and their compliance investigation staff. Further, fugitive emissions are expressly excluded for purposes of determining whether a source is a "major source" and whether a modification is a "major modification" (see 40 CFR 51.165(a)(1)(iv)(C) and 40 CFR 51.165(a)(1)(v)(G)). As described below, the same discrepancy in emissions calculations will also be created by forcing companies to use average component counts as provided in GHGRP subpart W. EPA has not provided sufficient basis or rationale to stray from their longstanding practice of calculating PTE when determining compliance obligations.

    b. Inapplicable and/or unrepresentative emission factors

Separate but related to the definition of "fugitive emissions component", the Proposed Rule provides that "For each piece of major production and processing equipment and each wellhead located at the well site, the owner or operator would first apply the default average component counts for major equipment found in Table W–1B and Table W–1C of GHGRP subpart W, and then apply the component-type emission factors for the population of valves, connectors, open-ended lines, and PRVs found in Table 2–8 of the 1995 Emissions Protocol. 86 FR 63171. OOGA disagrees with the use of component counts for major equipment found in Table W–1B and Table W–1C of GHGRP subpart W. The Subpart W component counts for major equipment are extremely variable based on type of operation and size which prevents an accurate component count average for a particular well site, thereby potentially resulting in a significant overestimate (or underestimate) of a facility's actual component count. Notably, smaller production sites, including wellhead only well sites, are associated with simpler production and processing equipment, with less componentry than what is detailed in Table W–1B and Table W–1C of GHGRP Subpart W. Fugitive emissions from these smaller production sites would be significantly overestimated using U.S. EPA's proposed methodology.

[4] 40 CFR 51.165(a)(1)(ii) and 40 CFR 51.166(b)(4)

OOGA also disagrees with U.S. EPA's proposal to use the default population emission factors found in Table W–1A of GHGRP Subpart W with respect to pneumatic controllers. The emission factors in Table W–1A of GHGRP Subpart W were developed for GHG emission inventory purposes and should not be applied for baseline determinations. Intermittent pneumatic devices are a prime example of how U.S. EPA's proposed methodology results in inappropriate emission factor development. Intermittent pneumatic devices are used in a variety of operations, all of which have different actuation rates and durations. Such operational variation does not lend itself to a standardized emission factor representative of actual emissions from intermittent pneumatic devices. For example, intermittent pneumatic devices used for safety purposes may only actuate once (or not at all) in a calendar year. Applying the emission factor in Table W–1A of GHGRP Subpart W to such a device would significantly overestimate emissions as compared to actual emissions.

c. Uncontrolled PTE from storage vessels should not be assumed

U.S. EPA has requested comment on whether sites should use the uncontrolled potential to emit (PTE) calculation for storage vessels in the site-level baseline estimate to account for times when these vessels are not operating as designed. 86 FR 63171. The uncontrolled PTE for storage vessels should <u>not</u> be used in the site-level baseline estimate. OOGA submits that normal operations, should be assumed for purposes of the baseline estimate. Consideration of abnormal operations will result in overestimating emissions and, thus, increased control costs with little environmental benefit. Moreover, U.S. EPA has recognized that legally and practicable enforceable emissions limits and control requirements may be accounted for as it relates to storage vessel affected facilities. That U.S. EPA would require assuming uncontrolled PTE for a particular source for purposes of one aspect of the Proposed Rule, but account for controlled emissions (which are legally and practically enforceable) in another aspect of the Proposed Rule is perplexing to say the least. As discussed below, the Association supports the ability to account for legally and practically enforceable limits for storage vessels, and such limits, including emission controls, should be reflected in the site-level baseline estimate.

d. Impacts on small businesses – Revision to key definitions and regulatory flexibility needed

OOGA is especially concerned about the implications that the proposed baseline estimate methodology will have on low production wells and their associated facilities, which comprise a significant portion of all the wells in Ohio. The Association supports the exclusion of "wellhead only well sites" from the fugitive emissions requirements under the Proposed Rule. However, OOGA requests revision to the definition of "major production/processing equipment" as it relates to exempt "wellhead only well sites". The Association notes that the typical layout of a low production well in Ohio includes the wellhead, a separator, and a single tank. With that, OOGA recommends that a single separator and a single tank be excluded from the definition of "major production/processing equipment". At the very least, the definition should be revised such that a separator and tank *that is associated with a low production well* is not "major production/processing equipment".

Separate but relatedly, the definition of "well site" should be based on the facilities typically located at a well site *and* which are not otherwise separately regulated under OOOO, OOOOa, or OOOOb. Applying

this approach tanks, liquid unloading, and pneumatic controllers[5] would not be included in the site-level baseline emission estimate.

Finally, OOGA recommends that U.S. EPA provide regulatory flexibility, including less burdensome requirements, for small businesses to comply with the fugitive emission monitoring requirements. Such flexibility includes, but is not limited to, an extended implementation period, providing alternatives to FLIR camera monitoring, reduced inspection frequency, and reduced documentation and reporting obligations.

B. Storage Vessel Affected Facility – Legally and practicably enforceable emission limits and control requirements under State permits should be accounted for in the < 6 tpy applicability determination

As an initial matter, OOGA commends U.S. EPA on recognizing the equivalency of certain state, local, and tribal air programs and, specifically, for recognizing the Ohio Environmental Protection Agency's general permit program for oil and gas well sites and compressor stations as being equivalent to Subpart OOOOa's LDAR program. However, in its proposed definition of "legally and practicably enforceable limit" (86 FR 63201), U.S. EPA appears to limit a qualifying legally and practicably enforceable limit to that which stems from state/local regulation.[6] OOGA does not object to the proposed definition, as written. Rather, OOGA requests that U.S. EPA clarify that an emission limit or control requirement in a state or local permit, which satisfies the elements of "legally and practicably enforceable limit" as defined under the Proposed Rule, can be accounted for in determining whether a storage vessel or tank battery is an affected facility under the Proposed Rule. Relatedly, OOGA recommends that U.S. EPA allow States to utilize permit programs to satisfy its CAA § 111(d) obligation in whole or in part.

C. U.S. EPA's proposed approach for regulation of pneumatic controllers is unreasonable

The proposed standard for pneumatic controllers is "zero emission controllers". 86 FR 63202. In other words, low-bleed, high-bleed, and intermittent bleed controllers would be prohibited at both new and existing facilities. U.S. EPA's proposed standard for pneumatic controllers is based on the assumption that electric controllers, particularly solar powered controllers, and/or instrument air systems are a viable alternative technology. 86 FR 63205-63207. U.S. EPA's assumption is flawed for several reasons. OOGA notes that Ohio's climate is not generally conducive to solar powered controllers, and because the Association's members operations are located predominantly in rural locations, access to connect to the electric grid is not always readily available. Obtaining access to the grid can take several months to years to coordinate with property owners (easements), electric utility providers, and environmental agencies to receive approval installation is of new electric lines. Once approval is received it can take several more months to complete construction. There are potentially significant environmental impacts from construction activities – e.g. setting of poles and/or excavation to run underground utility lines. Much of the timing of this process is out of the hands of the Association's members. It is a very large project that of which the EPA has not considered the entire scope much less that timing.

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[5] As discussed further below, the Association strongly objects to U.S. EPA's separate regulation of pneumatic controllers under the Proposed Rule, as the regulation of such ignores the practical differences between existing and new operations.

[6] In the Preamble discussion, U.S. EPA notes that "the court also emphasized that these non-Federally enforceable" controls must stem from state or local government regulations."

Additionally, the application of the same zero emission standard to existing sources under OOOOc will require existing sources to retrofit each and every pneumatic controller. Some facilities may even require complete reengineer and design in order to comply with these standards. Such compliance measures will likely be cost prohibitive and will force many of the Association's members out of operation, particularly small businesses and low production wells. U.S. EPA's failure to recognize that existing facilities must operate within their current circumstances – as compared to a new facility that has the ability to design-in required technologies – and expecting existing facilities to have the ability to absorb the cost of compliance the same as a new facility is unreasonable. OOGA urges U.S. EPA to reconsider this approach. At the very least, U.S. EPA should continue to allow for low and intermittent-bleed controllers in compliance with OOOOa. OOGA also requests that U.S. EPA retain the existing OOOOa determination that intermittent pneumatic controllers and non-natural gas-driven pneumatic controllers are not affected facilities.

D. Additional Sources – U.S. EPA's regulation of abandoned wells in Ohio is unnecessary

In the Proposed Rule, U.S. EPA requests comments to inform its potential development of NSPS and EG for emissions from abandoned wells. 86 FR 63240. U.S EPA notes that it broadly defines "abandoned wells" as "oil and natural gas wells that have been taken out of production, which may include [wells that are] . . . idle, inactive, dormant, or shut-in, but not plugged. Id. The Ohio Department of Natural Resources, Division of Oil and Gas (ODNR) is the agency vested with statutory authority to regulate all aspects of the permitting, location, and spacing of oil and gas wells and production operations, including, *specifically*, the plugging and abandonment of wells in Ohio.[7] U.S. EPA developing regulations to address emissions from abandoned wells is unnecessary and may potentially conflict with existing state regulations in Ohio.

The following is a summary of key provisions in Ohio law and ODNR's oil and gas regulatory program governing abandoned wells which adequately address the issues raised by U.S. EPA in the Proposed Rule.

- U.S. EPA claims that non-producing wells may fall into disrepair
    - Ohio law imposes obligations on well owners that prevent wells from falling into disrepair. R.C. 1509.12(A) provides that: (1) No person shall construct or operate a well, that causes damage to other permeable strata, underground sources of drinking water, or the surface of the land or that threatens the public health and safety or the environment; and (2) No owner of a well shall permit a well to leak fluids or gases.
    - Furthermore, if a well is discovered to be defective and/or inadequately constructed, "the person that owns the well or that is responsible for the well shall notify the chief of the division of oil and gas resources management within twenty-four hours of the discovery, and shall immediately repair the casing, correct the construction inadequacies, or plug and abandon the well." R.C. 1509.12(A)(3).

[7] See Ohio Revised Code (RC) 1509.02. "Production operation", as defined in R.C. 1509.01(AA), means "all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under this chapter, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging."

- U.S. EPA is concerned that State governments may allow abandoned wells to be dormant without plugging for several years (86 FR 63240).

    - Ohio law prohibits such conditions. R.C. 1509.062(A)(1) states, "The owner of a well that has not been completed, a well that has not produced within one year after completion, an existing well that is not a horizontal well and that has no reported production for two consecutive reporting periods as reported in accordance with section 1509.11 of the Revised Code, or an existing horizontal well that has no reported production for eight consecutive reporting periods. . . shall plug the well in accordance with section 1509.12 of the Revised Code,[8] obtain temporary inactive well status for the well in accordance with this section, or perform another activity regarding the well that is approved by the chief of the division of oil and gas resources management."

- With respect to idle wells and the potential for such wells to be abandoned without being properly plugged, U.S. EPA claims that States may allow such wells to remain idle without "management plans" and "allow idled status indefinitely." 86 FR 63241.

    - Again, this is not the case in Ohio. If a non-producing well is not plugged pursuant to R.C. 1509.062(A)(1), the person responsible for the well must submit an application for temporary inactive status (or take some other action approved by ODNR). The application for temporary inactive status must include, among other things: a demonstration that the well is of future utility and that the applicant has a viable plan to utilize the well within a reasonable period of time; and a demonstration that the well poses no threat to the health or safety of persons, property, or the environment. R.C. 1509.062(B).

    - A well may not approved for temporary inactive status unless ODNR "determines that the well that is the subject of the application poses no threat to the health or safety of persons, property, or the environment." R.C. 1509.062(D).

    - In Ohio, an approval of temporary inactive status expires 1 year after the date of approval. R.C 1509.062(D).

- In justifying U.S. EPA oversight of abandoned wells, the Agency emphasizes the need for and, thus, U.S. EPA's intent to require: closure plans; a means to track the transfer of wells and ensure transferees remain responsible for proper closure/plugging; temporary shut-in of idle wells to prevent emissions from the borehole and associated equipment; and requiring financial assurance bonding. 86 FR 63241.

    - Ohio law already addresses each of these issues.

        - Upon approval of temporary inactive status, R.C. 1509.062(C) states that "the owner shall shut in the well and empty all liquids and gases from all storage tanks, pipelines, and other equipment associated with the well. In addition, the owner shall maintain

[8] To ensure wells are properly plugged to prevent risk to human health and the environment, Ohio law requires any person plugging a well to first obtain a permit to the plug the well (R.C. 1509.12), and ODNR regulations specify procedures, methodologies and performance criteria that must be satisfied (Ohio Administrative Code Chapter 1501:9-11).

the well, other equipment associated with the well, and the surface location of the well in a manner that prevents hazards to the health and safety of people and the environment. The owner shall inspect the well at least every six months and submit to the chief within fourteen days after the inspection a record of inspection."

- While Ohio law allows an owner to renew a well's temporary inactive status prior to expiration, the renewal application must include "a detailed plan that describes the ultimate disposition of the well, the time frames for that disposition, and any other information that the chief determines is necessary." ORC 1509.062(D).

- After an owner's third renewal for any particular well, Ohio law authorizes ODNR to require the owner to provide a surety bond in an amount up to $10,000 for each of the owner's wells that has been approved for temporary inactive stratus. This bond is separate and in addition to the bond that is required in conjunction with a permit to drill a new well that is conditioned on compliance with site restoration requirements and plugging requirements. R.C. 1509.07(B)(1).

- With respect to the transfer of well ownership in Ohio, the permittee of the well remains responsible for the obligations and liabilities associated with the well unless and until the transferee submits notice of the transfer to ODNR along with certain required information and establishes proof of financial assurance. R.C. 1509.31(C).

As discussed above, ODNR is the state agency responsible for regulation all aspects of oil and natural gas production operations, including the plugging and abandonment of oil/gas wells, in Ohio. ODNR's existing statutory authority and regulatory framework governing abandoned wells is robust, and adequately addresses U.S. EPA's concerns regarding such wells. The Association, whose members operate in several other states, notes that other states have programs regulating abandoned wells similar to ODNR, and U.S. EPA acknowledged as much in the Proposed Rule. Accordingly, U.S. EPA should not proceed with developing NSPS and EG for abandoned wells.

E. The Proposed Rule will stifle oil and gas development in Ohio which will result in *inverse* Environmental Justice and significant negative impacts to Ohio's economy

U.S. EPA highlights that it "considered community and environmental justice implications in the development of this proposal" (86 FR 63115) and emphasizes, throughout the Proposed Rule, that the requirements under the Proposed Rule are designed to alleviate impacts especially on "overburdened and underserved communities". While U.S. EPA's intentions are seemingly well intentioned, U.S. EPA's analysis and considerations in this regard are, at best, one sided. The additional and more stringent controls required under the Proposed Rule impose substantial burdens on the industry that will inevitably render many operations, particularly low production wells, economically infeasible. U.S. EPA fails to recognize that the oil and gas industry provides necessary and critical services to overburdened and underserved communities and that the impact of Proposed Rule on the industry effectively results in "inverse" environmental justice in these communities.

Notably, for example, there are approximately 61,000 active wells in Ohio. About 60% of the wells in Ohio involve private contractual relationships between the producer and the landowner to take a limited amount

of natural gas for the Lessor's private domestic use (e.g., heat a farmhouse, supply fuel for cooking, etc.). This means that there are approximately 36,700 rural Ohioans who have direct access to natural gas because of oil and gas facilities. Compliance with U.S. EPA's Proposed Rule will challenge the future viability of well operations in rural Ohio which will have a significant negative impact on the people in those communities.

CONCLUSION

The emission controls, monitoring, and recordkeeping requirements under the Proposed Rule are overly burdensome, unnecessary and/or duplicative, and will stifle the continued development of oil and natural gas resources in Ohio. Such a result will have a substantial negative impact on homeowners, farmers, and small businesses, particularly in underserved rural communities in Ohio. U.S. EPA should revise the Proposed Rule by providing more regulatory flexibility and less stringent emissions control requirements where practical realities dictate as much.

OOGA appreciates the opportunity to comment on and suggest revisions to the Proposed Rule. We look forward to continuing to work with U.S. EPA in its development of rules governing VOC and methane emissions from the oil and gas sector that are reasonable, technically supportable, and consistent with the Clean Air Act.

Sincerely,

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Ohio Oil & Gas Association