



State of West Virginia
Office of the Attorney General
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February 13, 2023

Michael S. Regan
Administrator, Environmental Protection Agency
1200 Pennsylvania Ave NW, Suite 1101A
Washington, DC 20460

Submitted Electronically via Regulations.gov

Re: Comments on the Supplemental Notice of Proposed Rulemaking Titled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review” by the Attorneys General of the States of West Virginia, Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming

Dear Administrator Regan:

The Environmental Protection Agency has submitted a supplemental proposed rule, “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.” *See* 87 Fed. Reg. 74,702 (Dec. 6, 2022) (“Supplemental Proposal”). This Supplemental Proposal follows a November 2021 Notice of Proposed Rulemaking by EPA, which proposed new performance standards under Section 111 of the Clean Air Act for methane sources in the oil and natural gas sector. *See* 86 Fed. Reg. 63,110 (Nov. 15, 2021) (“Proposed Rule”).

We explained in our previous comment that EPA’s Proposed Rule went far beyond its statutory authority and would impose unnecessary costs on the energy industry, all while disregarding the role of the States in regulating methane emissions. *See* State of W. Va., *et al.*, Comment Letter on Proposed Rule Establishing New Standards of Performance for New and Modified Sources of Methane In the Oil and Natural Gas Sector (Jan. 31, 2022), <http://bit.ly/3JCHvze> (“States Comment”). Let us be clear: We stand firmly by our previous comment, and what we said there applies to the Supplemental Proposal, too. But it appears EPA missed our letter. Rather than listen to our advice, EPA has doubled down—proposing a rule that vastly increases EPA’s authority while imposing compliance obligations even stricter than the ones the Proposed Rule described.

We therefore write again, this time to highlight how the Supplemental Proposal exacerbates the Proposed Rule’s flaws. *First*, the Supplemental Proposal expands EPA’s statutory authority under the Clean Air Act—and beyond the authority it tried to claim in the Proposed Rule and a prior rule in 2016. *Second*, the Supplemental Proposal severs the cooperative federalism regime that drives this part of the CAA, opting instead for policies that erode States’ ability to regulate methane emissions. *Third*, the Supplemental Proposal imposes costly burdens on the energy sector, doubling the Proposed Rule’s costs.

Reducing methane emissions is a noble goal that industry stakeholders have already been working toward. The oil sector, for instance, reduced methane emissions relative to production by 60% between 2011 and 2020. *See Tackling Methane Emissions*, AM. PETROLEUM INST., <http://bit.ly/3165lsP> (last visited Feb. 3, 2023). Other reduction efforts, like the Oil & Gas Methane Partnership 2.0 and the Texas Methane & Flaring Coalition, are underway. But admirable environmental goals do not justify crushing the American energy sector. Top-down, heavy-handed governmental control is not the way to achieve the right balance between energy needs and environmental concerns—rather, we should look to American ingenuity and innovation, fostered by private initiative and state leadership, to provide solutions. The Supplemental Proposal leaves little room for that.

The agency should therefore abandon its latest methane misadventure and confine itself to lawful, reasonable rules that don’t upset a crucial sector of our economy.

BACKGROUND

As we noted before, for decades EPA took a hands-off approach toward areas like natural-gas transportation and the direct regulation of methane. States Comment at 3. But this approach ended in 2016, when EPA finalized New Source Performance Standards (“NSPS”) to directly regulate methane emissions from oil and gas facilities. *Id.* Several States, including West Virginia, challenged that rule. The cases have been held in abeyance. *See, e.g., West Virginia v. EPA*, No. 16-1264 (D.C. Cir. filed Aug. 2, 2016); *North Dakota v. EPA*, No. 16-1242 (D.C. Cir. filed July 15, 2016).

The Trump EPA then reverted to the traditional interpretation of the CAA, finding that EPA could regulate methane emissions from “only the production and processing segments” and not the “transmission and storage segments.” 85 Fed. Reg. 57,018, 57,019 (Sept. 14, 2020). But this rule was short-lived, as President Biden signed a joint resolution of Congress that effectively nullified the Trump rule under the Congressional Review Act.

EPA then moved to replace the Trump Rule with the Proposed Rule, which marked yet another attempt by EPA to regulate direct methane emissions from oil and gas facilities that it had never regulated before. But the Proposed Rule went even further than the 2016 Rule. 86 Fed. Reg. at 63,116. For the first time, the Proposed Rule offered emission guidelines for existing sources, which include hundreds of thousands of producing oil and gas wells. The Proposed Rule also anticipated stricter performance standards for new sources.

Though big on goals, the Proposed Rule was short on detail—the proposal contained no actual rules or proposed regulatory text. The Supplemental Proposal finally tries to fill those gaps with text EPA says it developed based on feedback from the Proposed Rule (along with other new information and analyses). Yet EPA didn't heed our advice that it should rein in the sweeping nature of the Proposed Rule. Instead, the Supplemental Proposal extends EPA's power grab over areas that it has never regulated before. And it does so at the expense of the States and industry.

DISCUSSION

In our previous comment, we explained that EPA's Proposed Rule departed from the CAA's statutory text and cooperative federalism regime. *See generally* States Comment. Yet the Supplemental Proposal ignores those concerns—and indeed worsens them. Two aspects of the Supplemental Proposal are especially pernicious. *First*, EPA suggests tightening the proposed requirements under CAA Section 111(b) for methane and volatile organic compound emissions from sources that began construction, modification, or reconstruction after November 15, 2021. These requirements include proposed standards for emission sources that have never been regulated in this way before. *Second*, EPA proposes to impose the first nationwide emission guideline for States to reduce methane emissions from existing facilities.

Just as in the Proposed Rule, EPA proposes here to flout the CAA's text by trying to regulate sources that can't be (and haven't been) regulated. The agency also tries to recast existing sources as new sources. It does so by ignoring the collaborative role the States play in methane regulation. While ignoring Congress is bad enough, the agency ignores the States' essential role, too. The Supplemental Proposal threatens to relegate the States to mere side players by limiting their legislatively endowed discretion in unreasonable and arbitrary ways. Finally, the Supplemental Proposal would exact heavy costs on the oil and gas industry and threaten to weaken the energy sector as a whole.

I. The Supplemental Proposal Expands EPA's Authority Beyond The CAA's Text— In A Worse Way Than Even The 2021 Proposed Rule Did.

In the Supplemental Proposal, EPA has once more sought to overextend its legal authority over both new sources and existing sources.

As to new sources, EPA has tried to backdate its proposed regulations' effective date to November 15, 2021—the date of the initial Proposed Rule. 87 Fed. Reg. at 74,716. Any sources developed after November 15, 2021 are deemed “new” and are regulated under the more aggressive regulatory programs for new sources. Meanwhile, those sources that came online before the November 15, 2021 cutoff are considered “existing.” The post-November 2021 existing sources will be regulated under the EPA-approved State programs that won't be implemented for a few more years. *Id.* Yet EPA was unwilling to provide regulatory text in November 2021. Public reports suggest that EPA waited until just after Election Day to release that text to avoid electoral backlash in the face of high energy prices. *See* Jean Chemnick, *Delayed Methane Rule Rams Into Rising Gasoline Prices*, E&E NEWS: CLIMATEWIRE (Oct. 20, 2022, 6:55 AM), <http://bit.ly/3WXqbI4>.

EPA’s attempt to backdate the effective date following a politics-driven delay contravenes the CAA. The Act says that the applicability date of an NSPS “is commenced *after* the publication of regulations” or “proposed regulations.” 42 U.S.C. § 7411(a)(2) (emphasis added). EPA argues that neither the CAA nor the Administrative Procedure Act requires regulatory text for purposes of notice of publication of regulations. 87 Fed. Reg. at 74,716. But as we explained in our previous comment, EPA departed from its own history of NSPS rulemaking by not publishing proposed regulatory text in its Proposed Rule. *See* States Comment at 4. And the departure is unwarranted, as a generalized *description* of anticipated regulations is different from the “proposed regulations” that the Act calls for. Without the proposed text, industries, States, advocacy organizations, and others could not effectively comment on the provisions in the Proposed Rules.

We see significant problems with the way that the Supplemental Proposal treats existing sources, too. In this action, EPA seeks to regulate existing sources for the first time, and the agency wants States to submit plans to enforce standards of performance. This Supplemental Proposal would limit methane from a vast array of existing oil and natural gas sources, including roughly one million producing oil and gas wells, 1,400 compression stations located along natural gas transmission lines, and 650 natural gas processing facilities. 87 Fed. Reg. at 74,827 n.276. It is worrisome that EPA intends to use the “little-used backwater of Section 111(d)” to sweep in hundreds of thousands sources that had not been subject to EPA air-quality regulations before with little explanation or justification for why such a broad approach is necessary. *West Virginia v. EPA*, 142 S. Ct. 2587, 2613 (2022).

Beyond that, EPA seeks to impose additional “presumptive” standards and compliance requirements—via proposed 40 C.F.R. part 60 subpart OOOOc—on sources already regulated under 40 C.F.R. part 60 subparts OOOO and OOOOa. *See* 87 Fed. Reg. at 74,716 (contemplating that sources subject to “older NSPS” will also need to comply with “the implementing state or Federal plan that is consistent with the presumptive standards in EG OOOOc”). In other words, EPA wishes to impose a different set of *existing* source requirements on sources already regulated as *new* sources. But the CAA’s plain text forecloses that approach. A “new source” is “any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.” 42 U.S.C. § 7411(a)(2). In contrast, an “existing source” is “any stationary source other than a new source.” *Id.* § 7411(a)(6). The categories are mutually exclusive; a source cannot be both a “new” source and an “existing” source. Thus, sources that are already treated as “new sources” subject to OOOO or OOOOa (because they were constructed or modified after those regulations were promulgated) cannot be existing sources subject to OOOOc, too. Section 7411(d) confirms as much by specifying that States are to establish a program for existing sources “to which a standard of performance under this section *would* apply if such existing source *were* a new source.” 42 U.S.C. § 7411(d)(1)(ii) (emphases added). Congress’s choice to use the words “would” and “were” makes plain that existing-source regulations are only for sources that are not, in fact, “new sources” already subject to a “standard of performance.”

Text matters. EPA should revisit the CAA’s text and conform the Supplemental Proposal accordingly.

II. The Supplemental Proposal Further Relegates States To A Bit Role In Regulating Methane Emissions.

EPA's ever-growing reach comes at the cost of the States. As we explained in our prior comment, the CAA expects that EPA will show respect for federalism and the role of the States when regulating in this space. *See* States Comment at 14-16. We noted how the initial Proposed Rule reordered the States' environmental regulatory structures while reducing the role States can play. *Id.* But EPA ignored these concerns in its Supplemental Proposal. Indeed, by sweeping so many small sources into the Supplemental Proposal, the agency has only worsened the cost problem. But the States' broad new unfunded mandate is hardly the only issue.

Take EPA's proposed definition of "legally and practically enforceable" in the specific context of storage vessels, which would push aside state regulation of emissions from this sector. *See* States Comment at 15. Consistent with the Proposed Rule, the Supplemental Proposal defines "legally and practically enforceable" in a way that's more rigid than the standard EPA uses to approve state implementation plan provisions. 87 Fed. Reg. at 74,800-01. And if the state standards don't meet this agency-created standard, then EPA will disregard the state limits and treat the storage vessels as uncontrolled. *Id.* at 74,803-04. So rather than respect state rules limiting emissions, EPA starts from a place of skepticism, effectively assuming it can supplant any state regulation that EPA considers inadequate based solely on its own disagreement. This presumption of federal control destroys the cooperative federalism that the CAA prescribes. All this dismissiveness bespeaks an inappropriate attempt by the agency to seize control over all aspects of methane regulation—even though States have extensive and useful experience regulating emissions for decades.

The agency is also still defining "modification" in an exceptionally broad way. That breadth is particularly obvious when it comes to wells undergoing fracturing or refracturing, but the agency appears to have left the door open for finding that liquids-unloading events could constitute "modifications," too. 87 Fed. Reg. at 74,781-82. This redefinition, of course, would render the wells "new sources" subject to direct federal control. But we fail to see how these activities constitute "modifications" under either the CAA's definition of the term or any ordinary understanding of it.

Worse, EPA proposes cutting States out of the process for dealing with super-emitter events altogether. 87 Fed. Reg. at 74,747. Right now, when a large-emission event is detected, States are notified. States then review and respond to the event accordingly. But under EPA's Supplemental Proposal, third parties who identify large methane leaks would notify owners and operators directly. That notice then obligates the plant's operators to conduct a root-cause analysis and take corrective action. *Id.* The States are effectively cut out of the process. Perhaps States may play some tag-along role in following up with the companies after they respond to a compulsory super-emitter notice. But other than that minimal bit, States are effectively sidelined. As we explain more below, we do not believe that EPA has authority to implement a super-emitter monitoring program of this kind at all. But that fundamental problem aside, the agency's failure to consider the present role of States in performing these functions is emblematic of the Supplemental Proposal's lack of concern for the federalism principles built into the Act.

EPA has also constructed new obstacles to the successful approval of a state plan submitted under Section 111(d), particularly through ambiguous “meaningful engagement” requirements. The agency ominously warns that insufficient “demonstrations” of “meaningful engagement” can now be “grounds for the EPA to find the submission incomplete or to disapprove the plan.” 87 Fed. Reg. at 74,829. The Supplemental Proposal calls for even more community engagement if a State accounts for the “remaining useful life of the existing source” in developing its state implementation plan. *Id.* But the agency has given the States little guidance on how to meet these new requirements. Instead, EPA has offered only an “example”—a description of its efforts in developing the Proposed Rule—that it then declares the new “minimum.” *Id.* at 74,830. Even this “example” is heavy on the vagaries, as when EPA obliquely says that it “engaged with community leaders ... by hosting a meeting with [the] EJ community.” *Id.* States are now told in the Supplemental Proposal that they, too, must identify such “vulnerable” communities—even including communities that are outside the State. *Id.* In short, rather than preserving the discretion that Section 111(d) anticipated, EPA proposes to dictate the day-to-day details of state administrative processes while measuring those processes against some undisclosed standard. We see no support for that action in any part of the CAA.

And EPA further shows little regard for the States by maintaining unrealistic timelines to create plans to regulate methane from existing oil and gas sources. Previously, EPA proposed a three-year timeframe to develop a plan and a two-year proposed timeframe for implementation. We explained that timeframe would be challenging to meet and would require hiring thousands of permitting engineers to finish the job in time. *See* States Comment at 16. Yet EPA responded by merely flipping the deadlines for developing and implementing the state implementation plans. States will now have 18 months to submit plans and then 36 months to implement them. 87 Fed. Reg. at 74,721. Altogether, States will have 4.5 years after the publication of the final rule to develop and implement plans—a shorter period than EPA originally proposed. This condensed timeline is especially stark considering the scale of the task that the agency has now thrust on the States. There is no basis or precedent for this rush considering that States usually have three years to develop state implementation plans under Section 110 of the CAA. 42 U.S.C. § 7410(a)(1).

EPA purportedly attempts to ease the pain by including presumptive standards that can “assist states in developing their plan submissions by providing states with a starting point for standards that are based on general industry parameters and assumptions.” 87 Fed. Reg. at 74,708. But these “presumptive” standards are presumptuous. The CAA empowers *States*, not the agency, to create their own implementation plans to reduce methane emissions from existing sources under EPA’s supervision. *Id.* at 74,810-12. This flexibility includes the right to “establish[] standards of performance for designated facilities” reflecting the EPA-derived emission limits that are achievable through the best systems of emissions reduction. *Id.* at 74,816. EPA is trying to squash state agency discretion by channeling it into EPA-drafted “presumptive” plans.

The Supplemental Proposal also appears to try to push States into abandoning their local-level discretion by saddling States with significant new obligations any time that discretion is employed. 87 Fed. Reg. at 74,810. CAA Section 111(d) allows States to apply a more lenient standard by considering “among other factors, the remaining useful life of the existing source” for each facility. 42 U.S.C. § 7411(d). EPA traditionally interpreted this freedom to apply in three

scenarios: (1) when the cost from plant age, location, or process design is unreasonable; (2) when there is a “physical impossibility of installing [the] necessary control equipment”; and (3) when other factors make a less stringent standard “significantly more reasonable.” 87 Fed. Reg. at 74,817. Yet under the Supplemental Proposal, States must offer EPA an extensive justification for using lower standards to reflect remaining useful life, sometimes calling for precision that may be impossible to achieve when talking about future events. Among other things, States must now show how their systems are “fundamentally different” than EPA contemplated before invoking their statutorily guaranteed discretion to consider remaining useful life. *Id.* at 74,819. Further, the collection of specific requirements for invoking that factor—which includes contingencies, restrictive cost considerations, and impacted-communities analysis, *id.* at 74,821-24—narrows the “range of permissible choices to the States” from that which Congress determined was appropriate, *Wis. Dep’t of Health & Fam. Servs. v. Blumer*, 534 U.S. 473, 495 (2002). For instance, no reasonable justification exists for limiting a State’s cost considerations to capital expenditures alone. 87 Fed. Reg. at 74,823.

In effect, the Proposed Rule replaces the state “laborator[ies]” for regulating methane at existing sources with one national administrative setup. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). And EPA admits as much. The agency complains that under the current scheme, “two states could consider [remaining useful life] for two identically situated designated facilities and apply completely different standards of performance.” 87 Fed. Reg. at 74,818. Yet that is precisely what cooperative federalism permits, because California and West Virginia may (and do) view the collective impact from cost, structure, or other factors on a source’s remaining useful life differently. *Id.* at 74,817. These different views may derive, for instance, from the different composition of a particular State’s energy portfolio—and may lead to equally good air quality across the board. So Congress invited this State-by-State variation, and EPA cannot contradict what Congress made clear in statute. *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 665 (2007). Section 111(d) entrusts States to use standards that are more lenient on certain sources because of—among other discretionary factors—remaining useful life. 42 U.S.C. § 7411(d).

III. The Supplemental Proposal Imposes Even Costlier Regulation.

All these restrictions come at a significant financial cost. We—and other commenters—wrote about the unnecessary costs of the Proposed Rule. But the Supplemental Proposal dwarfs even those costs, as the compliance costs have increased to \$1.8 billion annually from 2023 to 2035 compared to \$1.1 billion for the Proposed Rule. 87 Fed. Reg. at 74,842.

The Supplemental Proposal appears indifferent to the serious cost consequences it will place on the industry—making it one of the most expensive regulatory efforts the Biden administration has proposed. See *Regulation Rodeo*, AM. ACTION F. (2022), <http://bit.ly/3XZ52Pa> (last visited Feb. 3, 2023) (select “2021,” “2022,” and “2023” years). For example, EPA recognized in the Proposed Rule that regulatory costs could be especially burdensome on smaller production operations and excluded them from the proposed fugitive emissions monitoring. 86 Fed. Reg. at 63,170. But the Supplemental Proposal would instead *expand* this frequent leak monitoring to all natural gas well sites (including wellhead-only sites), regardless of their

estimated emissions. 87 Fed. Reg. at 74,708. Now, all operators must conduct monthly, bimonthly, quarterly, or semiannual inspections or monitoring, depending on facility type—a costly undertaking. The Supplemental Proposal would also require emissions monitoring to continue until a facility has been “closed, including plugging the wells at the site and submitting a well closure report.” *Id.* at 74,811. Thus, a huge class of defunct wells will now lead to continuing costs unless a producer is able to jump through a series of administrative hoops. And the agency has imposed strict zero-emission standards on pneumatic controllers (based on its sweeping judgment that such a standard is feasible at *every* site save a few in Alaska) and a zero-emission standard for pneumatic pumps. *Id.* at 74,766, 74,770. It is not even clear that these requirements can be met with tools readily available through existing supply chains. *Id.* at 74,769. New and onerous requirements on flaring and dry-seal compressors also seem to lack any reasonable cost-benefit analysis to justify them.

These new requirements will increase the costs of production of energy—especially the wells that don’t produce much oil and gas. Small businesses often own these low-producing wells, and the Supplemental Proposal could well impose such significant costs on these businesses that they will be forced to close (in return for little benefit). And with 80 percent of U.S. wells producing fewer than 15 barrels a day, the compliance costs will hurt American consumers in a serious way. U.S. ENERGY INFO. ADMIN., *THE DISTRIBUTION OF U.S. OIL AND NATURAL GAS WELLS BY PRODUCTION RATE 3* (Dec. 2022), <https://bit.ly/3jqWhOI>.

Just the scale of this rule gives us serious pause. West Virginia alone has over 55,000 active and 12,000 inactive oil & gas wells. But even West Virginia’s production and facilities numbers are small when compared to places like Texas—which currently monitors approximately 161,000 active oil wells and 87,000 active gas wells—or other states like Alaska, Louisiana, Oklahoma, and North Dakota. In short, the Supplemental Proposal will slap America’s energy producers with real costs at hundreds of thousands of facilities. But we see no meaningful discussion in the Supplemental Proposal of whether these price increases would fall within a reasonable range. Instead, EPA satisfied itself by declaring that the “\$1,970/ton of methane reduction” was below the \$2,185/ton threshold that it found reasonable six years ago. 87 Fed. Reg. at 74,718. Without any supporting data or analysis, these numbers are next to meaningless; it is not enough for EPA to note that it has done something similar before and dub its cost-benefit analysis complete.

Likewise, third-party monitoring of super-emitter events could lead to substantial new costs. Increased compliance costs are the most obvious, as increased investigations produce more response actions. 87 Fed. Reg. at 74,752. Those costs increase if the super-emitter events lead to enforcement action or litigation. Companies will also have to grapple with new public relations costs, as super-emitting notices will be posted on a public website. *Id.* at 74,750. And third-parties, who are newly deputized to police oil and gas facilities, may be encouraged to trespass on private property to monitor and measure for super-emitting events, leading to more potential harms and damages. *Cf.* Stuart N. Riddick, et al., *Measuring Methane Emissions From Abandoned and Active Oil and Gas Wells in West Virginia*, 651 *SCI. OF THE TOTAL ENV’T* 1849, 1865 (2019) (noting how private authors faced a “significant problem” in “land access” when they tried to

measure methane emissions in West Virginia because “much land [is] private, used for hunting and posted against trespass”).

All this assumes that third-party monitoring is even permitted—a more than questionable proposition. CAA Section 114, which speaks specifically to EPA’s ability to gather information and require monitoring, does not greenlight information-gathering by a third party. The agency implicitly recognizes as much by not citing that statute. But EPA goes too far in suggesting that a super-emitting event becomes a new “source” of emissions, 87 Fed. Reg. at 74,752, such that it can be separately regulated under Section 111. The reinterpretation stretches the ordinary understanding of “source” beyond its limits. The statute, after all, speaks to a “building, structure, facility, or installation,” not a moment in time. 42 U.S.C. § 7411(a)(3). And anyway, Section 111 further speaks of States and EPA taking action against facilities—not third parties. EPA also suggests that the third-party monitoring could be an additional compliance-assurance measure or work-practice standard that operates separate from the “best system of emission reduction.” 87 Fed. Reg. at 74,753. But we see nothing in the statute that would allow the agency to create “severable” standards that are said to be both necessary and unnecessary for emission reduction. *Id.*

In addition, the Supplemental Proposal openly refuses to engage with the complications that result from the “interplay between the provisions in this proposed rule and the Methane Emissions and Waste Reduction Incentive Program.” 87 Fed. Reg. at 74,722. That refusal could produce still more costs for the energy industry as a whole. Beginning in 2025, the “incentive” program will begin imposing fees on certain methane emissions from oil and natural gas facilities that exceed defined thresholds. But these facilities enjoy a “safe harbor” from the fees if they comply with methane standards that produce emission reductions that are equivalent to or greater than the reductions the Proposed Rule requires. But EPA has not explained how it will make this equivalency determination; nor has it explained how it will address the time gap between implementation of any new standards and the start date for the fee program. Many of us explained more than a year ago that a methane fee is ill-advised. *See* Letter from Patrick Morrissey, W. Va. Att’y Gen., et al. to Senate Leadership (Oct. 14, 2021), *available at* <https://bit.ly/314MKgS>. We expect Congress created the safe harbor to address concerns like those. Yet EPA seems willing to undermine the safe harbor’s usefulness by keeping standards for meeting it vague. *See* 87 Fed. Reg. at 74,721 (explaining that EPA has done only a “purely qualitative” comparison between reductions achieved by the Supplemental Proposal and reductions that would have been achieved by the Proposed Rule).

The Supplemental Proposal also imposes serious compliance costs on the States. West Virginia’s environmental regulatory agency noted that implementing EPA’s timetable of existing source monitoring in West Virginia alone could cost it over \$278 million each year. *See* W. Va. Dep’t of Env’t Prot., Comment Letter on Proposed Rule Establishing New Standards of Performance for New and Modified Sources of Methane In the Oil and Natural Gas Sector 2 (Jan. 14, 2022), <http://bit.ly/3HQDjdU>. These costs will only go up with the extra restrictions of the Supplemental Proposal. For example, the States’ implementation plans under Section 111(d) will add significant compliance costs because the States must follow various new calculation and

monitoring requirements to invoke remaining useful life, even putting aside the community outreach efforts that the Supplemental Proposal also requires. 87 Fed. Reg. at 74,821-24.

All this will happen as Americans pay more money for essential goods and services. The last thing Americans need is increased energy costs as oil and gas companies comply with EPA's standards. EPA cannot use flawed measures like the so-called "social cost of carbon" to justify excessive costs that will have real consequences. All the more when the purported climate benefits, illusory as they are, could fall anywhere within a breathtakingly broad range—from \$19 billion to \$130 billion. See EPA, REGULATORY IMPACT ANALYSIS OF THE SUPPLEMENTAL PROPOSAL FOR THE STANDARDS OF PERFORMANCE FOR NEW, RECONSTRUCTED, AND MODIFIED SOURCES AND EMISSIONS GUIDELINES FOR EXISTING SOURCES: OIL AND NATURAL GAS SECTOR CLIMATE REVIEW 17 (Nov. 2022), <https://bit.ly/3X6ltYQ>.

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EPA must respect the cooperative federalism regime and the CAA itself. The Supplemental Proposal does neither. EPA should table it.


Sincerely,



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West Virginia Attorney General



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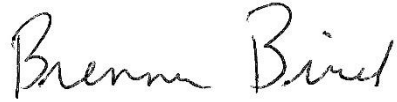
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