



May 15, 2017

Via e-filing on www.regulations.gov

Office of Regulatory Policy
Office of Policy
Mailcode 1803A
Attention: Docket ID No. EPA-HQ-OA-2017-0190
12000 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments on Executive Order 13777: Enforcing the Regulatory Reform Agenda

Dear Docket Clerk:

The GPA Midstream Association (GPA Midstream) appreciates this opportunity to submit comments on the Executive Order 13777 “Enforcing the Regulatory Reform Agenda,” reflected at 82 Fed. Reg. 12285 (March 1, 2017), and on EPA’s request for comments on “Evaluation of Existing Regulations” (82 Fed. Reg. 17793 (April 13, 2017)). GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of nearly 100 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products (“NGLs”) such as ethane, propane, butane and natural gasoline. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

GPA Midstream commends EPA for establishing a Regulatory Reform Task Force (RRTF) to evaluate existing regulations and make recommendations regarding their repeal, replacement, or modification. Our members are directly impacted by dozens of EPA rules, and we have a long history of collaborating with EPA on rulemaking through public comments and meetings. Accordingly, we are pleased to present our comments below for consideration by the RRTF listed in general order of priority. Items 1 and 2, in particular, merit close attention by the RRTF.

GPA Midstream Association
Sixty Sixty American Plaza, Suite 700
Tulsa, Oklahoma 74135
(918) 493-3872

1. **EPA Should Repeal New Source Performance Standards (NSPS) for the Oil and Natural Gas Industry, Subpart OOOOa Since an Endangerment Determination, as Required by the Clean Air Act, was Not Made Prior to Issuance of the Rule.** On June 3, 2016, EPA promulgated NSPS OOOOa for new, modified, and reconstructed sources at oil and gas facilities. NSPS OOOOa is a very significant rule in several regards. It is the first NSPS to directly regulate methane emissions for the oil and gas industry, and it introduces a wide-ranging leak detection and repair (LDAR) program for affected well sites and compressor stations. GPA Midstream provided extensive input to EPA throughout the rulemaking process for NSPS OOOOa through its comment letter dated December 4, 2015, supplemental information provided April 15, 2016, and several meetings and teleconferences.¹ In particular, the 2015 comment letter notes that EPA must make an endangerment determination for methane emissions from the oil and natural gas sector prior to issuing regulations under Section 111 of the Clean Air Act. EPA's prior endangerment finding for the oil and gas industry did not address methane emissions. GPA Midstream also explained that many of the requirements of NSPS OOOOa—including the LDAR program—imposed regulatory costs that vastly exceeded expected benefits.

If EPA chooses not to repeal NSPS OOOOa, EPA should reference GPA Midstream's White Paper provided in February 2017, for technical revisions. After publication of the final NSPS OOOOa rule, GPA Midstream filed a petition for review and a petition for reconsideration on August 2, 2016, due to multiple issues with the final rule.² The petition for review carried forward several unresolved items from NSPS OOOO that also appear in NSPS OOOOa. GPA Midstream provided a White Paper in February 2017 summarizing its key issues in support of the Petition for Review. In addition, the 2016 Control Technique Guidelines should be suspended pending review by EPA in parallel with the review of the 2016 NSPS OOOOa rulemaking, and should be subject to the same regulatory action that results from the NSPS OOOOa regulation review.³

2. **EPA Should Rescind the Greenhouse Gas Reporting Program (GHGRP) as it applies to Oil and Natural Gas Facilities.**⁴ The GHGRP was originally promulgated in 2009 to gather information about greenhouse gas emissions from various industry segments with the stated purpose to inform future rule making. It is important to emphasize that this rule only produces reported data and provides no direct environmental benefit. Within the GHGRP, the oil and gas industry is disproportionately burdened compared to other industry segments as it is required to take physical on-site measurements and report data for numerous source types for thousands of sites. The burden was increased by orders of magnitude starting in

¹ GPA Midstream submitted Subpart OOOOa comments to EPA Docket Number EPA-HQ-OAR-2010-0505-6881 on December 4, 2015. The supplemental letter was submitted to EPA Docket Number EPA-HQ-OAR-2010-0505-7552 on April 15, 2016.

² Petition for Review filed in the U.S. Court of Appeals for the District of Columbia Circuit filed on August 2, 2016 (Case 16-1242). The Petition for Reconsideration in letter from Mr. Matt Hite (GPA Midstream) to Ms. Gina McCarthy (EPA) dated August 2, 2016.

³ Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA-453/B-16-001) issued on October 20, 2016.

⁴ 40 CFR Part 98 Subparts A, C, W, MM, NN, PP and UU

2016 with the expansion to include gathering and boosting stations.⁵ Many of GPA Midstream's member companies spend hundreds of thousands of dollars each every year in order to comply with the GHGRP. Since the 2010 reporting year, EPA has gathered immense amounts of data from industry. Yet, in justifying the expansive Oil and Gas Information Collection Request (ICR)⁶ in 2016, EPA determined that GHGRP data was insufficient to support development of a rule for the oil and gas sector. This starkly contrasts with the stated purpose of the GHGRP to inform future rule decision-making. If the GHGRP cannot perform its stated purpose and creates significant burden with no direct environmental benefit, it should be rescinded.

As an alternative, EPA should significantly revise the GHGRP as it applies to the Oil and Natural Gas Industry in order to limit the cost and burden on operators.

GPA Midstream has submitted numerous rounds of comments on the GHGRP⁷, in particular Subpart W, and has several outstanding Petitions for Review⁸. Many of the comments and supplementary materials are still relevant today, as EPA has made only minimal rule changes from the information that was submitted. A simplification to Subpart W is imperative. As evidenced by the emissions data submitted annually, the emissions from the oil and natural gas industry rarely change significantly from year to year. EPA could obtain the same quality of information from inventories that are submitted at a frequency less than annually decreasing the associated cost and labor. In addition, the vast majority of emissions reported for the oil and gas sector are combustion emissions. However, this industry spends the vast majority of its time and money reporting emissions for other source types in Subpart W. Therefore, the overall cost and burden of this rule can be significantly reduced for the oil and gas industry by addressing issues as outlined in previous GPA Midstream comments and petitions.

- 3. EPA Should Not Add Natural Gas Processing Plants (Gas Plants) to Toxics Release Inventory (TRI) Reporting.** On January 6, 2017, EPA published a proposed rule to add gas plants as an industrial sector covered by the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), commonly known as the Toxics Release Inventory (TRI).⁹ The Oil & Gas Sector, specifically SIC Code 1321 (NAICS Code 211112 for Natural Gas Liquid Extraction), was not originally included as a TRI covered sector in 1987 and has not been included during the history of the TRI program. In this 30 years, neither the number of gas plants nor the chemicals expected to be present at most gas plants has significantly changed. We believe the added cost for reporting is underestimated, the reporting is duplicative to other programs, and the evidence as

⁵ 80 Fed. Reg. 64262 – 64298 (October 22, 2015)

⁶ GPA Midstream fully supports EPA's decision to withdraw the ICR.

⁷ Subpart W Gathering and Boosting Expansion comments submitted on February 24, 2015.

⁸ Petition for Administrative Reconsideration in letter from Mr. Jeff Applekamp (GPA) to Ms. Lisa Jackson (EPA) dated February 11, 2011. Petition for Review filed in the U.S. Court of Appeals for the District of Columbia Circuit filed on January 22, 2016 (Case 15-1473).

⁹ 82 Fed. Reg. 1651 (January 6, 2017).

presented does not support the need for the expansion. GPA Midstream encourages the RRTF to review its comment letter dated May 1, 2017 for additional detail.

4. **EPA Should Develop a Streamlined Synthetic Minor Oil and Gas Permitting Mechanism Under the Tribal Lands New Source Review (NSR) Program, as Many State Agencies Have Done.** On July 1, 2011, EPA promulgated a NSR permitting program for minor sources located on Tribal Lands. EPA subsequently identified a need for a streamlined permitting mechanism for the significant number of oil and gas sites located on Tribal Lands, and accordingly promulgated a Federal Implementation Plan (FIP) registration program on June 3, 2016. Unfortunately, the FIP registration is restricted to true minor sources, leaving many proposed projects, especially in the midstream sector, with only the option of acquiring a site-specific individual synthetic minor permit. EPA's regulations provide the agency with a *year* to issue a synthetic minor permit.¹⁰ This delays and even kills some infrastructure projects or causes companies to relocate projects to surrounding areas creating an uneven playing field for the tribes. Furthermore, the delay in constructing pipeline infrastructure can increase well pad flaring thereby causing significant, unnecessary air emissions from the production sector. GPA Midstream urges the RRTF to review its comments submitted on July 21, 2014 and December 4, 2015 for additional information on streamlining NSR permitting in Tribal Lands.
5. **EPA Should Finalize its 2007 Proposed Rulemaking to Remove the Once in Always In (OIAI) Policy for Major Sources under Maximum Achievable Control Technology (MACT) Standards.**¹¹ The OIAI policy originated from a May 16, 1995, EPA memorandum, which established that a MACT major source could not later reduce its emissions to become an area source after the first substantive compliance date. On January 3, 2007, EPA proposed rulemaking to repeal the OIAI policy by allowing a MACT major source to limit its emissions sufficiently to become an area source and thus no longer be subject to major source requirements. The current OIAI policy can often add significant equipment cost and compliance burdens years after the initial emission reductions were achieved. For example, equipment, such as engines, are regularly changed at oil and gas gathering sites, and the newly added equipment should not be subjected to a burdensome regulation simply because the site housed larger emitting sources in its past.
6. **EPA Should Rescind its State Implementation Plan (SIP) Call for Startup, Shutdown and Malfunction (SSM) Rules that 36 States' Clean Air Programs Fail to Meet Clean Air Act Requirements Based on Those Plans' Allowance for Unavoidable Emissions During SSM Conditions.** On June 12, 2015, EPA published its Final Action on State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of

¹⁰ Per 40 CFR §49.158(b)(7).

¹¹ 72 Fed. Reg. 69 (January 3, 2007).

EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction.¹² EPA misapplies the legal precedent under which it claimed authority to take this Final Action, and otherwise serves to remove longstanding provisions of appropriate and necessary rules under state SIPs. State SSM rules are legally appropriate, as the Clean Air Act allows states wide discretion in fashioning their clean air plans, and the Fifth Circuit Court of Appeals has upheld EPA's past approval of SSM provisions in the Texas SIP.¹³ GPA Midstream generally supports the petitioner's arguments made in the consolidated cases challenging the SIP call that are currently pending before the D.C. Circuit, *Walter Coke, Inc. v. EPA*, D.C. Cir. Case No. 15-1166.

7. **EPA Should Reaffirm the 2008 National Ambient Air Quality Standard (NAAQS) for ozone and Reconsider the 2015 NAAQS for ozone.**¹⁴ The 2015 ozone standard was unnecessary because the 2008 ozone standard already provided an adequate margin of safety for public health, and was resulting in decreasing ozone levels. GPA Midstream references its comments that were submitted on March 17, 2015,¹⁵ and endorses the comments submitted by the American Petroleum Institute (API) on the 2015 ozone standard.
8. **EPA should conduct an advanced notice of proposed rulemaking (ANPR) on Risk Management Program (RMP) amendments.** On April 3, 2017, EPA published a proposed rule to further delay the effective date of a final RMP Amendments rule until February 19, 2019, stating that this delay would allow the EPA time to consider petitions for reconsideration of this final rule and take further regulatory action.¹⁶ GPA Midstream believes that additional regulatory changes are needed for the RMP program and urges EPA to issue an ANPR that will provide all interested parties with an opportunity to comment on the issues raised in the reconsideration petitions, notably changes in the RMP program elements involving compliance audits, emergency response drills and preparedness activities, and information sharing. Such a process will inform EPA's decision making and ensure that any proposed rule to amend the RMP program is consistent with the goals of EO 13777.
9. **EPA Should Provide Practical Relief from Technical Requirements for Air Dispersion Modeling on the 1-Hr (NO₂, SO₂) and 24-Hr (PM_{2.5}) National Ambient Air Quality Standards (NAAQS).** It has been generally recognized that air quality models used by regulatory agencies, *e.g.*, AERMOD, are overly-conservative for the type of facilities GPA Midstream members operate. As a result, natural gas industry participants have been unnecessarily burdened during the air quality permitting process for new facilities in an effort to demonstrate compliance with the 1-Hr NAAQS for NO₂ and SO₂ or the 24-Hr NAAQS

¹² 80 Fed. Reg. 33,840 (June 12, 2015).

¹³ See *Luminant Generation Co. v. EPA*, 699 F.3d 427 (5th Cir. 2012).

¹⁴ 80 Fed. Reg. 65291 (October 26, 2015).

¹⁵ Per letter from Mr. Matt Hite (GPA Midstream) to EPA Docket Center dated March 17, 2015. Docket No. EPA-HQ-OAR-2008-0699-3742.

¹⁶ 82 Fed. Reg. 16146 (April 3, 2017).

for PM2.5. GPA Midstream members find that permit issuance can take longer than necessary, thus delaying infrastructure projects, while unnecessarily complex air quality modeling is performed. Companies may also install costly and unnecessary emission controls in order to model NAAQS compliance, and in some cases, companies are required to install costly air quality monitoring systems at new facilities. GPA Midstream recommends that significant practical relief be provided by EPA, in implementing the 1-Hr NAAQS for NO₂ and SO₂, and the 24-Hr NAAQS for PM_{2.5}, so that air dispersion modeling is not required altogether for minor emitting projects and greatly simplified for larger ones.

10. **EPA Should Incorporate Alternative Emission Testing Methodology into the Standards of Performance for Stationary (NSPS) Spark Ignition Internal Combustion Engines, Subpart JJJJ to Reduce Costs.** On January 18, 2008, EPA promulgated NSPS JJJJ for stationary engines which includes, among other requirements, emissions testing for natural gas-fired engines. NSPS JJJJ bifurcated larger natural gas engines into engine that are certified by the manufacturer and non-certified engines. Non-certified engines are subject to more frequent emissions testing, adding costs for operators and compliance oversight for regulatory agencies. It is evident from reading the support documents from the January 18, 2008, final rule that EPA anticipated widespread adoption of the certification program by manufacturers. This did not happen. Very few large natural engines are certified which shifts the cost and burden of recurrent emissions testing to the end-user.
11. **EPA Should Amend MACT ZZZZ Remote Engine Status to Base Remote Status Solely on the Current Location of the Engine.** On January 30, 2013, EPA amended 40 CFR 63, Subpart ZZZZ for stationary engines which allowed engines located at “remote” sites to utilize work practice standards rather than more expensive and burdensome control requirements.¹⁷ This amendment established that in order to maintain remote engine status at an area source, the engine must have been located at a remote location on October 19, 2013 and must always be located at a remote location after this date. Stationary engines are frequently moved between midstream locations. This imposes significant burden to demonstrate that each engine currently located at a remote location has never been set at a non-remote location since 2013. As time goes by, this requirement becomes increasingly difficult as engines continue to relocate between sites and change ownership. Moreover, the underlying basis for establishing the remote status is that the site was located in minimally populated area; thus, the location history of the engine should have no impact.
12. **EPA Should Revise National Emission Standards for Hazardous Air Pollutants (NESHAP) From Oil and Natural Gas Production Facilities, Subpart HH, Specifically 40 C.F.R. §63.760(f), to Ensure Facilities that Become Major Sources Due to Change in Gas Composition Have Three (3) Years to Achieve Compliance.** Currently, the rule can

¹⁷ 78 Fed. Reg. 6674 (January 30, 2013).

be interpreted to read that facilities that become major sources are required to comply immediately, which is unrealistic and would needlessly subject these sources to compliance risks, as GPA Midstream noted in its comment letter on a EPA's recent Request for Information on MACT HH.¹⁸

EPA must revise the emission limit for small dehydrator units at major sources of Hazardous Air Pollutants (HAPs) under NESHAP Subpart HH. Based on the requirements for small dehydrator units found in 40 C.F.R. §63.765, EPA has created unreasonable destruction efficiencies for units with very low HAP content in the facility's inlet natural gas stream. This problem is especially prominent in midstream facilities. EPA must establish either an inlet gas total HAP or benzene de minimis concentration, or a dehydrator unit uncontrolled total HAP or benzene emission de minimis, below which the small glycol dehydrator would not be required to reduce emissions. GPA Midstream provided additional detail in its comment letter on EPA's recent Request for Information on MACT HH.¹⁹

13. **EPA Should Reassess the Leak Detection and Repair (LDAR) Penalty Policy and Submit it for Public Comment by Affected Stakeholders.** On November 2, 2012, EPA released Appendix VI, Leak Detection and Repair Penalty Policy which provides guidance to regulators regarding how to calculate settlement penalties for violations. The guidance assigns dollar amounts to different types of programmatic misses in an LDAR program. However, the document does not provide explanation as to the origin of these numbers which appear to be arbitrary, without technical basis, and no degree of alignment to environmental harm. Had this policy undergone a public comment process, affected stakeholders would have had the opportunity to comment on the numbers, and EPA would have been able to ensure that there was a technical basis to support its policy.

14. **EPA Should Withdraw its Next Generation Compliance Tools in Civil Enforcement Settlements Policy Memorandum.** If EPA's objective is to enhance current programs, it should first provide a public comment period for affected stakeholders. The EPA Memorandum "Use of Next Generation Compliance Tools in Civil Enforcement Settlements" was issued January 7, 2015. Similar to the LDAR penalty policy, EPA has utilized this memorandum in lieu of rulemaking to supplement current regulatory requirements and as part of enforcement settlements. The use of next generation compliance tools is an important issue and EPA should solicit comment from all interested stakeholders before determining how to use these tools in the context of settlement.

¹⁸ Per letter from Mr. Matt Hite (GPA Midstream) to Ms. Gina McCarthy (EPA) dated March 11, 2016, in regard to National Emission Standards for Hazardous Air Pollutants; Request for Information (Docket EPA-HQ-OAR-2015-0747).

¹⁹ Ibid.

15. EPA needs to provide applicants with a defined process and timeline under Section 103 of the Ocean Dumping Act to ensure predictable and manageable project schedules.

The EPA is responsible for issuing permits that allow disposal of dredge material at designated Offshore Disposal Placement Areas (ODMDS) under the Marine Protection, Research and Sanctuaries Act (MPRSA) or Ocean Dumping Act (ODA)). Section 103 specifically pertains to permits for the discharge of dredged material where the applicant can be a third party, including private oil and gas companies. Section 103 must comply with permitting regulations in 33 CFR Parts 320-330 and is evaluated by the U.S. Army Corps of Engineers. These requirements are extensive and highly technical leaving them open for interpretation. The sole guidance document, ("the Green Book") is approximately 25 years old and some EPA regions have guidance documents that assist with the decision making, while other regions don't. GPA Midstream recommends that EPA needs to develop a process that allows for fair and reasonable effort by the applicant to result in timely and predicable outcomes.

Thank you for your consideration of our comments. Please feel free to contact me if you have any further questions.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association