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December 8, 2017

The Honorable Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attention: Docket ID Number EPA-HQ-OAR-2017-0346 & EPA-HQ-OAR-2010-0505
Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: Notice of Data Availability in Support of “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements”

Dear Administrator Pruitt:

The American Petroleum Institute (“API”) is pleased to submit the attached comments on the notices of data availability in support of EPA’s New Source Performance Standards (“NSPS”) 40 C.F.R. Part 60 Subpart OOOOa, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements” 82 Fed. Reg. 51,788 and 82 Fed. Reg. 51,794 (both dated November 8, 2017).

API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America’s energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. Most of our members conduct oil and gas development and production operations and are directly impacted by these proposed actions.

Throughout the development of the 2012 oil and gas NSPS rule and its amendments in 2016, API has maintained a collaborative working relationship with Agency staff to provide operational and emissions data to inform the developments of these important rules. During this time, our objective has remained the identification of cost-effective emission control requirements that reduce VOC emissions for new sources and, as a co-benefit, also reduce methane. API encourages EPA to proceed with its review and revision of the underlying rule as expeditiously as possible, based on sound science and economics, considering the operational and technical issues that have already been raised in comments and litigation. API supports extension of compliance deadlines as the Agency completes this review.

Coincident with the publication of the Notices of Data Availability, EPA also published a memo entitled *Estimated Cost Savings and Foregone Benefits Associated with the Proposed Rule, "Oil and Natural Gas: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements"*, which contains an analysis considering foregone benefits associated with social cost of methane. API is reviewing the updated analysis provided by EPA and may provide additional comments following a more detailed review.

Please contact me at toddm@api.org or 202-682-8319 with any additional questions regarding the content of this submittal.

Sincerely,

/s/

Matthew Todd

cc: Bill Wehrum, USEPA
Mandy Gunasekara, USEPA
Elliott Zenick, USEPA
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API's Comments on EPA's Notice of Data Availability in Support of "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements"

82 Fed. Reg. 51,788 (Nov. 8, 2017)

Docket ID No. EPA-HQ-OAR-2010-0505, EPA-HQ-OAR-2017-0346

In our August 2, 2016 petition, API raised specific technical issues that warrant reconsideration and review of the rule by the Agency. These issues still require attention, as do the issues raised by others, including the Independent Petroleum Association of America (IPAA), Texas Oil and Gas Association (TXOGA), and the Gas Processors Association (GPA).

On July 27, 2017, API submitted comments¹ to the EPA regarding the legal authorities the agency possesses to extend the relevant compliance deadlines of the Subpart OOOOa provisions. On August 8, 2017, API submitted comments further expanding on some of the technical issues and challenges industry would face and currently is facing in the absence of a targeted extension of the compliance deadlines of certain rule provisions.

As described in prior comments and as further discussed below, API believes outstanding issues support the need to provide a compliance extension while the Agency considers new information and assesses its impacts as part of the reconsideration process. While the Agency has proposed to extend the compliance dates for a targeted subset of the rule requirements for two years, there is nothing preventing the agency from reconsidering these issues, along with the other technical issues raised in API's August 2, 2016 petition, in less than two years. Going forward, the Agency should consider addressing any issues, on an expedited timeline, that can be easily addressed to provide the clarity the industry is seeking.

1. EPA Has Authority Under the Clean Air Act To Stay Compliance Dates.

A. Background

On June 3, 2016, EPA finalized new source performance standards ("NSPS") for new, reconstructed, and modified sources in the oil and natural gas sector pursuant to its authority under section 111(b) of the Clean Air Act ("CAA" or "Act"). 81 Fed. Reg. 35,823 (June 3, 2016) ("2016 NSPS Rule"). The 2016 NSPS Rule was codified at 40 C.F.R. part 60, Subpart OOOOa, and is sometimes referred to as the Quad Oa Rule. API filed petitions for reconsideration with EPA seeking administrative reconsideration of the 2016 NSPS Rule. Earlier this year, EPA granted

¹ Docket ID No: EPA-HQ-2010-0505-10577

reconsideration of four narrow issues in the 2016 NSPS Rule: (1) the fugitive emission requirements for low production well sites; (2) the process related to the alternative means of emission limitations (“AMEL”) for fugitive emission requirements; (3) the standards of performance for pneumatic pumps at well sites; and (4) the requirements for certification by a professional engineer. 82 Fed. Reg. 25,730-31 (June 5, 2017). EPA also granted a three-month stay, pursuant to section 307(d)(7)(B) of the CAA, of the following three requirements in the 2016 NSPS Rule: (1) the fugitive emissions requirements (also referred to as leak detection and repair); (2) the standards of performance for pneumatic pumps at well sites; and (3) the requirements for certification by a professional engineer. *Id.* at 25,732.

In addition to the three-month stay, EPA issued a proposed rule staying compliance dates for these portions of the 2016 NSPS Rule. 82 Fed. Reg. 27,645 (June 16, 2017) (“Proposed Rule”). API filed comments in support of the Proposed Rule on July 27, 2017. American Petroleum Institute, Legal Comments on EPA’s Proposed Rule (July 27, 2017), EPA-HQ-OAR-2010-0505-10577 (“API Comments”). On November 8, 2017, EPA issued a notice of data availability (“NODA”) that explains in further detail the legal basis for the Proposed Rule. 82 Fed. Reg. 51,788 (Nov. 8, 2017). As EPA notes, it possesses the legal authority under sections 111(b) and 301(a)(1) of the CAA to amend the compliance deadlines in the 2016 NSPS Rule through “phase-in” periods. *Id.* at 51,791 (identifying both section 111 and section 301 as providing legal authority for the Proposed Rule); *see also* API Comments at 3-6, 12-14.

B. Section 111 of the CAA Provides the Agency With Authority To Extend the Relevant Compliance Deadlines Through Phase-In Periods.

As the NODA explains, EPA has authority under section 111 of the CAA to extend or “phase-in” the relevant compliance dates in the 2016 NSPS Rule. EPA issued the 2016 NSPS Rule under section 111(b)(1)(B) and can, as it notes, use the “same statutory authority” to extend the relevant compliance deadlines in the rule. 82 Fed. Reg. at 51,789. EPA correctly notes that agencies have inherent authority to revise or reconsider prior decisions, including “the appropriate length of the phase-in periods provided in the 2016 Rule for specific requirements, as well as whether to provide one for phasing in an additional compliance assurance measure.” *Id.* at 51,790. Under this authority, EPA proposes to “extend the current phase-in periods for the fugitive emissions requirements and well site pneumatic pump requirements, as well as providing one for the requirement for certification of closed vent systems by a professional engineer.” *Id.*

As discussed further below, section 111 allows EPA to establish a reasonable compliance period after the effective date of a rule and does not restrict how EPA can set compliance dates for

NSPS. Further, the statute does not proscribe when compliance must be obtained when EPA conducts a voluntary, ahead-of-schedule review of NSPS, as EPA did with the 2016 NSPS Rule.

EPA has authority under the plain language of section 111(b) of the CAA to extend compliance deadlines. Standards of performance are effective upon promulgation. 42 U.S.C.

§ 7411(b)(1)(B). Under the Act, however, a rule's effective date can differ from its compliance dates. For example, section 112(i) has separate, specific instructions for when a rule becomes effective *and* when compliance is required. *Id.* § 7412(i). This demonstrates that Congress does not consider the terms "effective date" and "compliance date" to be synonymous. *See id.*

§ 7412(d). Section 111 specifies when a rule must be effective but, unlike section 112, does not state when regulated sources must achieve compliance with NSPS. Consequently, EPA has discretion to establish reasonable compliance dates that are after the effective date of NSPS.

In the NODA, EPA states that it can "extend the current phase-in periods for the fugitive emissions requirements and well site pneumatic pump requirements" and establish a phase-in period "for certification of closed vent systems by a professional engineer," because agencies have inherent authority to revise or reconsider prior decisions. 82 Fed. Reg. at 51,790. As a reasonable exercise of its ability to revise rules and reconsider its decisions, the Agency may decide to revise "the appropriate length of the phase-in periods provided in the 2016 [NSPS] Rule for specific requirements, as well as whether to provide one for phasing in an additional compliance assurance measure. . . ." ² *Id.*

EPA also has discretion to establish phase-in periods here because the 2016 NSPS Rule was the result of EPA's voluntary rulemaking, not the statutorily-required 8-year review of the oil and gas NSPS. Section 111(b)(1)(B) requires EPA to review the NSPS for each source category every 8 years, unless "such review is not appropriate in light of readily available information on the efficacy" of the NSPS. 42 U.S.C. § 7411(b)(1)(B). In 2011, EPA conducted this required review of the oil and gas NSPS and issued a proposed rule to revise the NSPS. 76 Fed. Reg. 52,738, 52,740-41, 52,754 (Aug. 23, 2011). In 2012, EPA issued a final revised NSPS based on its statutorily-required review. 77 Fed. Reg. at 49,490. The next 8-year review was not required until at least 2020, but EPA voluntarily reviewed the NSPS early, issuing the 2016 NSPS Rule

² EPA has used this approach in several other NSPS rules, as API noted in its comments on the Proposed Rule. API Comments at 5. EPA included future compliance deadlines in a 2012 NSPS rule for the oil and gas sector and in at least two other rules. *See* 77 Fed. Reg. 49,490, 49,517-19 (Aug. 16, 2012) (establishing phased requirements for reduced emissions completions equipment based on availability and cost considerations); *id.* at 49,500, 49,525-26 (establishing a one-year phase-in period for storage vessel controls); 70 Fed. Reg. 28,606 (May 18, 2005) (establishing mercury standards under section 111 for coal-fired electric utility steam generating units using a two-step compliance program); 73 Fed. Reg. 3568 (Jan. 18, 2008) (finalizing NSPS for stationary spark ignition internal combustion engines that included delayed compliance dates).

years ahead of the statutory deadline. Thus, extending or phasing-in the relevant compliance deadlines for the 2016 NSPS Rule does not result in an extension of the statutorily-mandated schedule for 8-year review of these NSPS.

Further, EPA asserts it has discretion to issue new standards of performance regardless of the timing of the 8-year review. 82 Fed. Reg. at 51,789 (“EPA has discretion under CAA section 111(b)(1)(B) to add new standards of performance for additional pollutants or emission sources not previously covered concurrent with, or independent of, the 8-year review.”); *id.* at 51,790 (“[T]here is no reason that the EPA’s authority and discretion to promulgate such standards should be constrained by the timing of the 8-year review. The EPA, therefore, reasonably interprets CAA section 111(b)(1)(B) to allow the Agency to exercise its discretion to promulgate new performance standards for additional sources or pollutants when appropriate (concurrent with or independent of the 8-year review).”). EPA states it issued the 2016 Rule under this authority. *Id.* at 51,790. In such circumstances, EPA has discretion to establish phase-in requirements.³

C. Section 301(a) of the CAA Also Provides Additional Legal Support for the Proposed Rule.

In the NODA, EPA reasonably and lawfully identifies section 301(a) of the CAA as supplemental authority for its proposed phase-in of compliance deadlines for the 2016 NSPS Rule. EPA accurately notes the “broad rulemaking authority” it has under section 301. 82 Fed. Reg. at 51,790-91 (discussing section 301 case law and explaining that it justifies “phase-in” periods here). Section 301 grants EPA authority to issue “such regulations as are necessary to carry out” its obligations under the Act. 42 U.S.C. § 7601(a)(1).

API agrees with EPA’s explanation in the NODA that it is necessary for EPA to extend these deadlines to carry out its obligations under the CAA. As EPA explained, a “phase-in” is necessary for the fugitive emission requirements because without it, “regulated entities would incur significant and potentially unnecessary additional costs and compliance burden to implement the 2016 Rule, and, in some cases, at the expense of disrupting or complicating compliance with applicable state programs, just to later revert back to what they were doing in the first place.” 82 Fed. Reg. at 51,791. EPA promulgated the AMEL in the 2016 NSPS Rule to avoid these very problems. *Id.* As such, EPA is correct that “it is not clear that the marginal

³ API also notes EPA’s alternative authority under section 111 to establish future effective dates based on its determination of the best system of emission reduction, which was discussed in more detail in API’s comments on the Proposed Rule. API Comments at 4-5.

additional emission reductions achieved during the EPA's reconsideration process outweigh the potential disruption to existing state programs and company-specific programs." *Id.*

Regarding the well site pneumatic pump requirements, EPA explains that some sources require greater clarity regarding the definition of "greenfield site" in the technical infeasibility exemption and that this provision places sources experiencing actual technical infeasibility at risk of being in noncompliance. As such, "[d]elaying these requirements until the EPA resolves this potential problem through its reconsideration process is consistent with the 2016 [NSPS] Rule to require emission reductions from well site pneumatic pumps only where it is technically feasible to do so." *Id.* EPA also notes that it is necessary for EPA to phase-in the closed vent certification requirement for a professional engineer because "EPA had not considered its cost and whether the additional assurance justifies such expenditure," which is contrary to "section 111 of the CAA, which expressly identifies cost as a factor for consideration when promulgating emission standards." *Id.*

API agrees that all of the requirements of section 301 are met here. EPA's section 301 authority is broad and addresses when regulations are necessary to carry out EPA's duties under the Act. *See, e.g., NRDC v. EPA*, 22 F.3d 1125, 1148 (D.C. Cir. 1994) (agreeing that EPA had authority under section 301 to issue binding basic inspection and maintenance programs rules); *Specialty Equipment Market Ass'n v. Ruckelshaus*, 720 F.2d 124, 138 (D.C. Cir. 1983) (holding that EPA had authority under section 301 to create a reimbursement scheme for vehicle manufacturers "even though the statute does not specifically authorize such a scheme"); *Citizens To Save Spencer Cty. v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979) (upholding EPA's use of rulemaking, on the basis of section 301(a)(1), to resolve a conflict between two provisions of the Act).

EPA may use section 301 of the CAA when necessary, provided that Congress has not written a "clear impediment to the issuance" of a regulation, *NRDC v. EPA*, 22 F.3d at 1148, or no other "statutory language on point" exists, *NRDC v. EPA*, 749 F.3d 1055, 1063 (D.C. Cir. 2014).

Nothing in the CAA (or any other statute) bars EPA from using its authority under section 301(a)(1) in this instance. *See id.* Section 307(d) of the CAA cannot be deemed a more specific provision because that provision applies only to mandatory reconsideration proceedings, and EPA's reconsideration proceedings here do not meet the criteria for mandatory reconsideration. *See Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017). As such, section 307(d) does not apply here. Moreover, section 705 of the Administrative Procedure Act cannot be deemed a more specific provision because it is a portion of a different statute and therefore sheds no light on EPA's CAA rulemaking authority.

Phase-in periods are necessary for EPA to meet the statutory standard under section 111 of the CAA and respect the process enshrined in section 307 of the CAA. Specifically, it would

undermine the statutory purpose and text of section 111 for EPA to require current compliance with regulations that are duplicative of state requirements, provide little or no environmental protection, impose significant compliance costs and burdens on regulated entities, and cannot be said to constitute BSER. There is nothing in the Act that is a “clear impediment” to staying the relevant compliance dates here. *NRDC v. EPA*, 22 F.3d at 1148.

Finally, there are no statutory deadlines that prevent EPA’s use of section 301 here. As previously explained, EPA completed the required 8-year review of the NSPS in 2012, and the next review is not required until at least 2020. 42 U.S.C. § 7411(b)(1)(B). The provisions EPA proposes to stay here were promulgated in the 2016 NSPS Rule, which EPA undertook *after* it completed its required 8-year review of the oil and natural gas NSPS in 2012. By staying certain provisions of the 2016 NSPS Rule, EPA would not be circumventing this review cycle.

2. Support for Compliance Phase-in Extensions

In the Notices of Data Availability for both the 3-month and 2-year stays, EPA seeks comments, data, and any other information that would help the EPA determine whether a phase-in is needed for certain Subpart OOOOa requirements and, if so, the length of such period. As stated in our August 8, 2017 letter, API believes that EPA requires additional time to address issues in the rule, but our members indicate that the most concerning issues are:

- (1) Technical problems with implementation of the rule for specific and unique operational situations that create untenable situations for meeting compliance, and
- (2) Certain requirements and associated burden on operators that provide little or no environmental benefits.

With respect to the technical problems raised in previous comments, it is noted that the problems are generally not widespread issues (e.g. delay of repair scenarios, addressing leak detection requirements in very cold environments, etc.). The fugitive emission compliance obligations were only effective for two months and the pneumatic pump requirements were effective for less than one year during the initial compliance period for Subpart OOOOa. Therefore, many of the issues raised in API’s reconsideration request and in our prior comments on the stays may not be reflected in most initial compliance reports submitted earlier this fall. However, it is also critically important to note that it is not possible to predict when applicable sources could experience the technical issues API has raised. Without a compliance extension to allow time to revise certain aspects of the rule, operators are exposed to potential non-compliance scenarios.

One example of a potential noncompliance scenario is the inability to conduct fugitive emission surveys for prolonged periods of time in cold weather environments. For example, as stated in ConocoPhillips Alaska Inc.'s letter dated December 4, 2015, temperatures on the Alaskan North Slope can remain below the acceptable range for operation of leak detection equipment for four or more consecutive months. This not only limits the periods that semi-annual surveys can be conducted at well sites located on the North Slope, but also makes it impossible to complete the initial monitoring surveys within 60 days during winter months for a new or modified well site. EPA has previously set precedent within Subpart OOOO and Subpart OOOOa to address such challenges. The rules currently allow for an exemption from LDAR in §60.5401(e) and §60.5401a(e) for natural gas processing plants located on the Alaskan North slope. Consistent with this precedent, API recommends EPA consider similar exemptions from LDAR for well sites and compressor stations on the Alaskan North Slope.

More generally, there are similar instances for other locations that experience extreme cold weather (e.g., assets in North Dakota and Wyoming) such that winter temperatures may stay below the acceptable range to operate the leak monitoring equipment throughout the initial 60 days of operations a new or modified well site. EPA recognized this challenge by providing a waiver due to cold temperatures in §60.5397a(g)(5) for compressor stations. API recommends that EPA also provide a similar waiver for well sites.

Another example is specific to the delay of repair requirements found in §60.5397a(h)(2). If specialty parts are not available and need to be ordered or if a certain repair on a specific leak would take a prolonged period of time to complete, operators could be forced to reconcile a customer demand (e.g., feed of fuel to a power plant) by restarting a compressor after an unplanned event (e.g., equipment trip) against remaining shutdown for prolonged period of time to enable the repair of what could be a very small and insignificant leak. See further discussion of such leak repair scenarios in Section 3.b. of this letter.

In our December 4, 2015 comments on the draft Subpart OOOOa rule, API expressed the need for a phase-in period for certain provisions (e.g., leak detection and repair at wells sites and compressor stations, control of pneumatic pumps, etc.) and EPA provided time for phasing-in these requirements in the final rule. While some operators may be experiencing challenges linked to the availability of resources, the primary objective for an extension of the compliance deadlines is to allow EPA enough time to address the issues on record. This includes fixing technical problems with the rule, providing clarifying language better reflecting EPA's intent, and removing or otherwise addressing requirements that were not properly considered during the notice and comment process. In parallel, this time will allow the Agency to properly consider new information and assess its impacts as part of the reconsideration process.

API encourages the Agency to work as quickly as possible to address the issues raised in the reconsideration process. While many issues can be fixed in less than 2 years, providing up to 2

years is appropriate to avoid further extension of compliance deadlines. API sees no reason that more than 2 years' time would be required.

3. Fugitive Emissions Requirements

a. 3rd Party Equipment (e.g., equipment such as meters owned by midstream operators):

As stated in API's August 8, 2017 letter, the leak monitoring and repair requirements should not apply to all equipment at a well site or compressor station regardless of ownership. As an initial matter, the potential emissions from fugitive midstream equipment at well sites are insignificant to the costs associated with establishing leak detection and repair programs. Further, based on the definition of a "well site", it can be interpreted that EPA intends the definition of a well site to apply to the producers' operations at the well site, and not ancillary equipment separately owned and maintained by third-party midstream companies. As set forth in the definition, a well site means "*one or more surface sites...constructed for the drilling and subsequent operation of any oil well, natural gas well, or injection well.*" It is the producer of the well that constructs, drills and operates the well. As stated in the NODAs, this definition has resulted in "confusion as to the appropriate scope of components that are included in the definition of the well site for the fugitive emission requirements," particularly with respect to "ancillary midstream assets (e.g., meters)" that are "owned by legally distinct companies from the well site owner and operator and could have limited emissions." 82 Fed. Reg. at 51,798; 82 Fed. Reg. at 51,792

In addition, midstream operators have no way of confirming and controlling when a well site may become modified and subject to the leak detection and monitoring requirements for well sites. In §60.5365a(i)(3), the requirements that trigger modification of well sites includes any time a new well is drilled, or when an existing well is hydraulically fractured, or refractured. Midstream operators have no control over, nor advance knowledge of, when a well site operator takes actions that may constitute a modification. There are many instances where insignificant equipment owned by a midstream company, such as a meter run, is located at a well site along with equipment owned and operated by the producer. There are legal and logistical issues that can prevent the midstream operator from being able to comply with Subpart OOOOa for that small piece of equipment based on actions made by another operator. This presents significant practical issues with renegotiating contractual obligations on the thousands of sites⁴ that may eventually be impacted by these requirements, particularly as facilities are modified over time. It is not a reasonable expectation that these arrangements can readily provide for these circumstances.

⁴ At least one member company has hundreds of locations currently affected and another member company estimates thousands of locations will eventually be affected as sites are modified.

API recommends EPA provide clarification that midstream equipment are not part of the definition of a well site, and the requirements were intended to be applicable to the well site operator only.

b. Delay of Repair

As API commented in our August 8, 2017 letter, while the concept of delayed repair is appropriate and necessary, the current rule language describes events that may not present safe conditions to perform leak repair. The delay of repair provisions as written do not reflect the realities of well site and compressor station operation, where blowdowns can occur as part of standard operations to prevent safety concerns. Unscheduled and emergency shutdowns occur from time to time, and can last a very short time before service is returned. As written, the rule requires operators to make repairs following a blowdown or during an unscheduled or emergency shutdown and this requirement does not allow adequate time to make certain repairs that require specialty parts, logistical prearrangements, skilled labor, etc. Specialty parts are sometimes required to be ordered from the manufacturer and may take longer than 30 days to arrive, which creates an untenable situation for completing the repair within 30 days in absence of a delay of repair provision specific to parts availability. This is especially a concern for locations on the Alaska North Slope that contain custom parts designed for the Arctic environment.

While these situations will occur infrequently and most repairs will be completed expeditiously, operators must have flexibility to delay repair when warranted. Although such situations are expected to be uncommon, the rule requirements have the potential to lead to prolonged shutdowns that could last days or weeks. For example, during the recent hurricane events in Texas and Florida, certain compressor stations experienced emergency shutdowns that were unplanned. If a compressor station was subject to Subpart OOOOa and had previously identified a leak that was on delay of repair, at least a portion of the compressor station (where the leak is occurring) would have had to remain offline for additional time until the leak could be repaired per the current requirements. Coordinating such repair during such a natural disaster event, especially if a specialty part is required to complete repair for a fugitive emission source, is not reasonable and the impacts and cost impacts of such a scenario were certainly not considered by EPA during the rulemaking process.

In some cases, such as on the Alaska North Slope and northern areas of the lower 48 states, the shutdown of a facility or a group of facilities in the winter can pose significant risks, including potentially the lack of primary electricity generation and space heating, and the potential for idle flow lines to gel or freeze. Backup diesel power generation is available only in limited capacities, and has higher emissions than gas turbines. In such extreme cases, bringing critical facilities back on line should not be delayed for relatively minor repairs for fugitive emissions.

The rule should allow for such overriding considerations and not put the operator in a position of having to elect between regulatory compliance and prudent facility operations.

Additionally, the language in §60.5397a(h)(2) presumes that various compressor station shut down events and well shut-ins would necessarily result in the blow down of all equipment located on site (including the component on delay of repair). This is not accurate. For example, some equipment on site may remain isolated, but under pressure (such as the line pressure of the site). As written, the rule language could be interpreted to mean that all equipment must be depressurized during a shutdown in order to repair the fugitive leak. In such circumstances, the emissions from forcing blow down of all equipment can be greater than the emissions associated with the component leaking on delay of repair.

There are several instances where a well is shut in automatically or manually for a very short period of time before production is restarted. Specifically, there are many well sites that have a flash gas compressor on site to collect gas from a low pressure separator or have a VRU that collects flash gas from storage tanks. These units compress the gas to a pressure sufficient to get the gas into a sales line. Depending on the remoteness of the well site and other factors, some operators will configure the equipment instrumentation so that when a flash gas compressor and/or a VRU trips offline, the well is automatically shut-in to prevent a short-term release of gas from pressure relief valves. A well could also be shut-in due to an emergency of some type, a fault in instrumentation, or a power outage. In most of these cases, the process equipment is not depressurized so that the well can be brought back into production and normal operations resumed as quickly as possible. If a fugitive component on delay of repair located at a well site with this type of configuration would need to be repaired prior to restart, it could result in the blowdown of pressurized equipment in order to fix a potentially small leak. This can result in significant cost to the operator due to lost revenue for a very small benefit, if any, to the environment considering the potential need to blowdown equipment for the repair.

API does not believe EPA's intent was to create such scenarios described and recommends the Agency provide clarification related to the delay of repair provisions to mitigate these technical, safety, and environmental issues.

API encourages the Agency to work as quickly as possible to address the issues raised in the reconsideration process. While many issues can be fixed in less than 2 years, providing up to 2 years is appropriate to avoid further extension of compliance deadlines. API sees no reason that more than 2 years' time would be required.

c. Alternative Means of Emission Limitation Provisions

Adherence to the Clean Air Act Section 111(h) outlines the procedures for Alternative Means of Emission Limitation (AMEL) work practices, which includes a process that is labor intensive, time consuming and provides little incentive for operators to participate. As API stated in our August 8, 2017 letter, the AMEL provisions included in the rule are not sufficiently clear to facilitate effective application and approval of AMEL, and therefore fail to serve their intended

purpose. The ability to apply for and obtain AMEL for fugitive emissions requirements determines whether operators of well sites and compressor stations, in particular those subject to existing state programs or those which have invested in emerging technology, must redirect or expend additional resources and efforts to implement the 2016 Rule's fugitive emissions requirements. This is negatively impacting and complicating compliance with applicable state programs and will hinder progress in using emerging technology - all while providing little to no incremental environmental benefit.

API agrees the Agency requires additional time to review the proposed AMEL process and reduce burden for Industry where duplicative requirements occur or where emerging technology has been identified.

4. Pneumatic Pumps

a. Greenfield sites

As stated in API's August 8, 2017 letter, pneumatic pumps at "greenfield" well sites are not currently eligible to claim technical infeasibility associated with the control of an affected pneumatic pump. Due to lack of clarity regarding EPA's intent, the current rule language puts operators into a potentially untenable situation. This occurs if regulatory authorities interpret a "greenfield" well site as synonymous with "new" for Subpart OOOOa, thereby removing future technical infeasibility determinations for the entire life of a well site. It is unclear if a well site remains a greenfield site for the entire life of the well or only for a short period of time.

Initial design for construction of a greenfield site may not require installation of a pneumatic pump or a control device for the early operational period of a well site. At some point later in the life of a well (which could be years), site design requirements may change where a new control and/or pump is installed and a technical infeasibility determination is justified but not available if the site is considered greenfield throughout the life of the site. Further, even for a new site, process or control device design requirements may not be compatible with controlling pneumatic pump emissions.

Some examples include the following:

- A new site contains equipment owned and operated by two different entities and the owner/operator of an affected pneumatic pump is not the owner/operator of a control device located at the same site. For instance, a dehydration unit owned and operated by the gathering company could have a control device, but the well site owner or operator cannot route the pump emissions to the gathering company's control device.
- A new site design only requires installation of a high pressure flare to handle emergency and maintenance blowdowns. It may not be technically feasible for a low pressure pneumatic pump discharge to be routed to a high pressure flare. In addition, the flare

or other combustion device may have a rated heat capacity that would be exceeded if the discharge of pump were to be sent to it.

- Another and likely more common example would be if a new greenfield site design calls for installation of a pneumatic diaphragm pump but no control device is present. Only a process heater or boiler is present at the facility. The design and operation of a given pneumatic pump and co-located process heater or boiler may not be compatible. The heater and boiler will be designed based on the process it needs to support without regard to the additional capacity or operational need to control a pneumatic pump. More specifically, due to the small size (generally 125,000 Btu per hour to 2.5 mmBtu per hour) of many heaters or boilers used at well sites, burner capacity may be insufficient to compensate for emission combustion of additional large pneumatic diaphragm pump discharge and may result in frequent safety trips and burner flame instability (i.e., high temperature limit shutdowns, loss of flame signal, etc.). Additionally, industry guidelines (i.e., NFPA 86) would prohibit the use of boilers or heaters as control devices where the following criteria are not met: the operating temperature must be a minimum of 1400°F, emission source safety interlocks, etc.

EPA can address the greenfield issues by providing clarification that allows for technical infeasibility determinations at all well sites (and not just at non-greenfield sites). Additionally, EPA should clarify that heaters and boilers are not considered control devices with respect to pneumatic device provisions under Subpart OOOOa. It is noted that additional time to phase in the requirements as written will not address the issues API has raised. Rather, the time will allow for EPA to appropriately review and provide clarifications.

5. Professional Engineer Certifications

Under current rule provisions, many companies face additional costs and project delays for a third-party Professional Engineer (PE) to design and certify closed vent systems and/or certify technical infeasibility associated with control of a pneumatic pump. As an update to our prior comments, API members report costs from \$2,000 - \$9,000 per certification; with actual cost dependent on the site complexity and thus the amount of engineering design time involved.

Some challenges experienced by operators include the following:

- Multiple member companies have had difficulty finding professional engineers willing to certify the design based on the certification statement included within the rule. Engineers were concerned with the liability of the statement and whether they had sufficient insurance or bonding to cover such a certification.
- At least one state, Wyoming, is taking a position that PE certifications for sources located in that state must be completed by a PE registered in Wyoming. While EPA indicated that this was not their intent, EPA failed to determine how state regulations or

practices might result in such situations. This new, unanticipated additional burden is not trivial and can result in material cost and schedule impacts on operators.

- At least one member company has experienced additional burden with obtaining the PE certification for a new tank installed at an existing facility. In this instance, the third-party consultant would not certify the closed vent system (CVS) individually, since this specific contractor did not originally design the entire facility-wide system. While the CVS system met engineering best practices, the certification could not be provided since this professional engineer was not willing to certify only a portion of the overall process operations / system.
- Since certification is on the design specifications of the facility and not necessarily only the CVS, any alteration at the facility must be re-reviewed, no matter how material the change may be to the operation of the CVS. Therefore, costs incurred to maintain PE certifications are generally ongoing and not a one-time expense.

A technical assessment of a closed vent system by a qualified person is an appropriate action for compliance assurance of the emission standards for storage vessels, compressors and pneumatic pumps. However, the certification requirement to have the assessment performed by a licensed Professional Engineer presents additional challenges and unintended costs than EPA considered when finalizing these requirements. Meanwhile, the PE certification process does not add significant environmental benefit to the rule provisions since there are provisions in place for ongoing compliance specific to the operation of closed vent systems, a general duty for all operators to minimize environmental impacts, and annual report submittals must be approved by a certifying official.

Therefore, API recommends EPA clarify that technical assessments can be performed by a qualified person in oil and gas facility design and does not require additional certification by a licensed Professional Engineer for both CVS and for the technical infeasibility assessment associated with control of a pneumatic pump.