Davis Graham & Stubbs LLP

October 15, 2012

The Honorable Lisa P. Jackson, Administrator
Office of the Administrator
U.S. Environmental Protection Agency
Room 3000
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Docket ID. No. EPA-HQ-OAR-2010-0505: Petition for Administrative Reconsideration of the Final Rule for Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 77 Fed. Reg. 49,490 (Aug. 16, 2012).

Dear Administrator Jackson:

Western Energy Alliance (the "Alliance")[1] submits the following Petition for Administrative Reconsideration ("Petition") of the Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 77 Fed. Reg. 49,490 (Aug. 16, 2012) ("Final Rule") under the Clean Air Act ("CAA") § 307(d)(7)(B). The Alliance appreciates the Environmental Protection Agency's ("EPA" or "the Agency") consideration of numerous comments made on the proposed rule, including the Alliance's comments. Nevertheless, the Alliance believes the Final Rule remains unduly expensive, operationally burdensome in the extreme, and particularly regressive for the many smaller oil and gas operators who are members of the Alliance. Additionally, the Final Rule suffers in many areas from the EPA's decision to regulate numerous minor sources of criteria and hazardous air pollutants ("HAPs") in the oil and gas sector as if they were major stationary sources, without regard to the regulatory burdens and relative lack of environmental or public health benefits of doing so. These failings all stem from the Final Rule's incorrect assumptions about the nature of oil and gas operations and their associated emissions, and EPA's reliance on faulty or incomplete data, and indifference to missing data.

[1] Western Energy Alliance represents 400 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The majority of our members are independent producers—small businesses with an average of twelve employees.

Additionally, and despite EPA's characterization to the contrary, the Final Rule is effectively a premature and unauthorized greenhouse gas (*i.e.*, methane) regulation, disguised under the cover of EPA's NSPS and NESHAP programs. In this respect, the Final Rule places the cart before the horse by purporting to reduce methane emissions *before* the Agency has even collected the necessary data about those emissions. By definition, a rule based on non-existent (or incredibly inaccurate) data lacks a rational basis on the record, and is arbitrary and capricious agency action, and, therefore, violative of the Administrative Procedure Act ("APA").

Moreover, the Final Rule's many faulty assumptions lead to significantly over-estimated benefits and unrealistic cost projections—particularly for the thousands of small operators that will be disproportionately impacted. As a result, the Final Rule threatens to stall one of the only burgeoning commercial sectors in the domestic economy: oil and gas exploration and production. Accordingly, the Alliance encourages EPA to grant this petition for administrative reconsideration, so EPA can thoroughly address the many flaws and unnecessary provisions in the Final Rule, as described more specifically below.

I. STANDARD OF REVIEW—PETITION FOR ADMINISTRATIVE RECONSIDERATION

A. CAA § 307(d)(7)(B)

The applicable standard for granting a petition for administrative reconsideration is, in relevant part:

> If the person raising an objection can demonstrate to the Administrator that it was *impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule*, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit. Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

42 U.S.C. § 7607(d)(7)(B) (emphasis added).

The Final Rule introduces new concepts and requirements not present in, or not a logical outgrowth of, the proposed rule, and fails to correct some of the fundamental errors that existed in the proposed rule in a number of respects. Taken as a whole, these errors, some of which appeared for the first time in the Final Rule, are so fundamentally critical and centrally relevant to the Agency's economic and environmental justification for the rule (especially for a large segment of the Alliance's members) that EPA should grant this petition for administrative reconsideration to address and fix them.

II. GROUNDS FOR RECONSIDERATION

The Alliance's multiple grounds for reconsideration, consistent with the standard summarized above, are as set forth below. The Alliance also generally supports the petitions for reconsideration, and the points documented therein, particularly with respect to the implementation issues created by the Final Rule, submitted by the American Petroleum Institute ("API").

A. The Final Rule's Cost-Benefit Analysis is Based on Flawed Data and Incorrect Assumptions, Resulting in a Misleading and Inaccurate Projection of Costs and Benefits

In connection with this Petition, John Dunham and Associates ("JDA") has conducted a review of portions of EPA's cost-benefit analysis on behalf of the Alliance, including a critique of several central assumptions and categories of data used to form the Agency's analysis. The JDA report is attached hereto as Appendix "A." In sum, due to inaccurate and old data, and incorrect assumptions largely about methane emissions, EPA has estimated that the Final Rule results in approximately $14 million in *net benefits*. Once these incorrect assumptions about methane emissions (as well as the number of storage vessels and costs of labor) are corrected, the Final Rule actually imposes $98 million in *net costs* (and no benefits)—a net difference of approximately $112 million. After substituting more accurate data and assumptions, it becomes clear that any benefit provided by the Final Rule (which the Alliance disputes even exists) is vastly outweighed by its costs. In short, the Final Rule imposes regulatory burdens and costs not justified by the record, or by any putative benefit to public health or the environment. As such, it is at risk of being struck down as arbitrary and capricious agency action in the event of judicial review of the Final Rule.[2] The Alliance believes the better course for EPA is to fix this severely skewed cost/benefit ratio via administrative reconsideration, and then promulgate a more streamlined and carefully tailored rule consistent with the points raised below.

[2] The Alliance has simultaneously filed a petition with the D.C. Circuit Court of Appeals seeking judicial review of the Final Rule.

B. The Final Rule's Focus on Methane Exceeds EPA's Statutory Authority, Resulting in an Arbitrary and Capricious Rule that Overestimates Both Methane and VOC Benefits

(1) *EPA Has Exceeded its Statutory Authority in a Final Rule that Is Arbitrary and Capricious and Lacks a Rational Basis on the Record*

EPA has exceeded its statutorily-mandated authority under the CAA §§ 111 and 112 by promulgating a rule whose central component and major purported benefit is a reduction in methane—a greenhouse gas, not practically, and arguably not legally capable of regulation under the current New Source Performance Standards ("NSPS") or National Emission Standard for Hazardous Air Pollutant ("NESHAP") programs.[3] Moreover, the Final Rule's estimated benefits are based on incorrect assumptions and a lack of data about not only methane emissions, but industry operations and emissions in general, most notably related to volatile organic compounds ("VOCs"). These incorrect assumptions and gaps in data alone render the rule arbitrary and capricious.

Despite EPA's characterization to the contrary, the Final Rule is a greenhouse gas rule, centered on, and justified by, putative methane reductions. On one hand, EPA touts the Final Rule's "significant reductions" in methane emissions, yet, on the other hand, minimizes these reductions as mere "co-benefits" of the rule. *See* 77 Fed. Reg. at 49,496. And yet, the purported methane reductions play a far more prominent role in EPA's rationale and justification for the rule than merely as "co-benefits" of the proposed regulations Indeed, the estimated benefits from methane reductions (over 1.0 million tons) dwarf the estimated benefits derived from reductions in HAPs or VOCs (11,000 tons and 190,000 tons respectively). *See* 77 Fed. Reg. at 49,492 Table 1. The cost/benefit justification by EPA for the Final Rule also is reflective of the fact this is a methane rule, since EPA estimates that the rule will result in a "net annual costs savings of about $11 million . . . *due to the recovery of salable natural gas and condensate*." 77 Fed. Reg. at 49,534 (emphasis added); *see also* 77 Fed. Reg. 49,534-36, Section E. (justifying the rule overwhelmingly in terms of methane reductions and not VOC or HAP reductions). Remarkably, however, EPA states "we are not taking final action with respect to regulation of methane." 77 Fed. Reg. at 49,513. This statement is irreconcilable with the rest of the rule.

The problem is not with trying to reduce methane emissions *per se* (a goal the Alliance supports through voluntary measures and programs), but rather, that the Final Rule simply lacks

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[3] The final rule also exceeds the scope of the consent decree as defined by the litigation history that was the genesis of the Final Rule. *See generally*, February 4, 2010 Consent Decree, Case No. 1:09-CV-00089-CKK, which obligates EPA to revise 40 C.F.R. Part 60, Subparts KKK and LLL and 40 C.F.R. Part 63, Subparts HH and HHH, and does not contemplate or authorize a rulemaking to regulate greenhouse gases from stationary sources in the oil and gas sector—especially before those sources have completed the data collection and reporting requirements under the greenhouse gas reporting rule.

the scientific support required under well-established administrative rulemaking standards to render the rule legally valid.[4] EPA has acknowledged that it does not have accurate or even sufficient data with respect to methane emissions. *See e.g.*, 77 Fed. Reg. 49,513 ("Over time, collection of [methane] data through the [greenhouse gas reporting rule] and other sources will help EPA evaluate whether it is appropriate to directly regulate methane from the oil and gas sources covered by this rule."); *see also id.* ("[W]e intend to continue to evaluate the appropriateness of regulating methane . . .."). And, as was noted during the notice and comment period, the methane data EPA did use are significantly flawed in material respects, rendering any projections about methane reductions or benefits unreliable at best, and more likely than not simply wrong. Indeed, a June 1, 2012 report prepared by URS based on data from 91,000 wells operated by 20 companies over a wide geographic range (as opposed to EPA's data from 8,800 wells, many of which were not intended to serve as a profile for nationwide emissions) concluded that EPA's estimates were twice as high as what operators were actually reporting.[5] Yet, EPA did nothing to supplement or correct this problem in the Final Rule, and summarily dismissed the issue in its response to comments. As it stands, the Final Rule, which is a methane conservation or regulation rule based on incomplete or missing data, would likely be invalidated upon judicial review, which is why EPA should exercise its discretion to correct the Final Rule through reconsideration.

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[4] *See e.g.*, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.* 463 U.S. 29, 43 (1983) ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.") (citation and internal quotation omitted). As noted in the IHS CERA report, EPA's methane estimates are based on averaging only four data points of widely varied sample sizes and questionable data quality. This is insufficient support for a rule largely based on and justified by methane reductions. *See id.* (The reviewing court may not supply a reasoned basis for the decision which the agency itself has not given); *see also e.g.*, *Greater Yellowstone Coalition, Inc. v. Servheen*, 665 F.3d 1015 (9th Cir. 2011) (affirming the district court's ruling that the U.S. Fish and Wildlife Service "failed to articulate a rational connection" given "the *lack of data*" about the stability of grizzly bear populations in the face of *substantial data* about decline) (emphasis added); *Prometheus Radio Project v. F.C.C.*, 652 F.3d 431 (3d Cir. 2011) (overturning an FCC order, where the Commission offered *no data* in support of its action).

[5] The URS report, which was compiled using a survey of API and America's Natural Gas Alliance ("ANGA") members, is available here (http://www.api.org/news-and-media/news/newsitems/2012/jun-2012/api-anga-study-methane-emissions-are-half-epa-estimate.aspx). In addition, the Alliance, in its comments to the proposal, encouraged EPA to make part of the record the IHS CERA report, *Mismeasuring Methane: Estimating Greenhouse Gas Emissions from Upstream Natural Gas Development*, August 2011. As an example, EPA estimated 130 million metric tons of CO_2-equivalent ("mtCO_2e') are emitted annually from gas wells during well completion/flowback, whereas IHS CERA's estimates are 43 mtCO_2e. Unfortunately, EPA ignored entirely the IHS CERA report, failing to incorporate it into the record or otherwise respond to the issue (either in the preamble or the extended response to comments). The implications of EPA's seriously flawed or missing data on methane emissions cuts to the heart of why the Agency should grant this Petition.

(2) *The Final Rule Over-Regulates Insignificant VOC Sources*

A variety of negative consequences arise from EPA's flawed attempt to regulate methane through a VOC/HAP rule. For example, EPA was encouraged during the notice and comment period to create a low-VOC emission exemption for all affected facilities (*i.e.*, 10 percent VOC content by weight for storage vessels), to ensure that low-emitting VOC facilities did not incur the significant costs of compliance where there would be little or no associated "VOC benefit."[6] Notwithstanding the limited exception proposed, which has a precedent in 40 C.F.R. Subpart KKK applicable to gas processing plants, EPA summarily dismissed this suggestion.[7] While the Alliance appreciates the substituted emissions-based standard in place of the flawed throughput-based standard first proposed, the Final Rule still does not contain a broadly applicable low VOC emissions threshold exemption for all facilities that would be expected if the Agency was truly seeking to regulate the most "significant" sources of VOCs, consistent with the Agency's obligations under the CAA with respect to NSPS and NESHAP program requirements and the scope of this rulemaking.

Similarly, EPA was urged to promulgate the storage vessel standards on a tank-battery-wide basis, rather than an individual tank basis, to avoid regulating vessels with little or no VOC emissions. Instead, the storage vessel control and other requirements apply to each individual vessel. In addition to being contrary to how most states currently regulate emissions from storage vessels (*i.e.*, on a tank-battery-wide basis), this approach makes monitoring and compliance extremely difficult. The intent of the 6 tpy threshold should be to create a floor above which the Agency believes VOC emissions are "significant," and where a subsequent reduction provides meaningful health and environmental benefits when compared with costs. Taken to its logical extreme, however, the individual vessel emission standard encourages operators to adjust their throughput such that no single vessel would exceed the 6 tpy standard, but collectively a tank battery may—potentially vitiating any environmental benefit intended by the rule.

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[6] It is telling that an analogous example of a true "VOC rule"—the NSPS applicable to equipment leaks of VOCs from onshore natural gas processing—contains such a low-emission exemption. *See* 40 C.F.R. § 60.632(f) (exempting equipment determined "*not to be in VOC service*" where it may be reasonably demonstrated that VOC content will never be expected to exceed 10 percent VOC content by weight). The same or similar principle applies here and a low VOC emitting threshold must be incorporated into the rule for all affected facilities to comply with CAA § 111's mandate to balance costs and benefits.

[7] In the Final Rule preamble, EPA notes the suggested exemption of 10 percent VOC content by weight, but rejects it on the grounds the commenter did "not provide[] supporting information justifying this threshold." 77 Fed. Reg. at 49,521. This, however, flips the applicable burden on its head. *See* CAA § 111(a)(1) (requiring EPA to "take[] into account the cost of achieving [§111 standards] and any nonair quality health and environmental impact and energy requirements"). It is EPA's burden, not the regulated public, to set emissions standards at levels for all affected facilities where the costs are justified by the benefits. Otherwise, all standards would simply be set at zero. Here, it is EPA's burden to demonstrate why a low VOC emission threshold exemption is not warranted—particularly given the fact such an exemption exists in other analogous VOC oil and gas rules. *See* n.6, *supra*.

In addition, the Final Rule does not contain a clear provision stating that the 6 tpy storage vessel standard does not apply if it can be reasonably demonstrated that existing state controls result in emissions below the standard. Again, if the Final Rule truly were focused on reducing significant sources of VOCs, EPA should make clear that batteries not exceeding the standard due to existing controls that are legally and practically enforceable are not subject to the new federal requirements. While the Alliance appreciates the Agency's discussion in its September 28th letter in response to API correspondence, this issue is of such import that it should be clarified in the language of the rule itself and not left to Agency interpretation in a letter. It is not advisable to fix flawed rules through letters or guidance.

C. The Final Rule Imposes Costly, Inflexible Requirements that Result in Little, if any, Environmental Benefit

In addition to the incorrect assumptions and missing data discussed above, aspects of the Final Rule reflect a fundamental misunderstanding of industry operations. As a result, many of the requirements will be difficult, if not impossible to comply with, at significant expense and with little environmental benefit. There are several examples that are particularly significant and pertain to the effectiveness and costs of the rule that the Alliance urges EPA to correct upon reconsideration. These include:

- No venting option in limited circumstances—The Final Rule appears to require, in all cases, either combustion or recovery under the gas well affected facility provisions. Unlike the proposed rule, the Final Rule imposes this requirement without an option to "minimize" emissions to the extent practicable.[8] Without such a provision, it will be impossible in many cases to comply from a basic engineering standpoint (*e.g.*, where emissions during the early stages of flowback are not combustible due to low hydrocarbon content and no routing option is available; where pressure is too low; or where safety hazards or local regulations prohibit pit flaring). Even with the clarification in EPA's September 28th letter response to API, this provision still needs to be more definitively revised, and the Alliance expressly supports API's initial petition for administrative reconsideration dated August 16, 2012, in this respect;

- No infeasibility exemption in REC requirements—The Final Rule does not provide a clear exemption for when it is infeasible to use pipelines to comply with the Reduced Emission Completion ("REC") requirements. *See* §§ 60.5375(a)(1)-(4) (requiring routing to pipeline unless "flowback cannot be directed to the flow line"). EPA should make clear that in cases where no pipeline exists, it is owned by a third party

[8] Notably, the Final Rule's provisions governing storage vessels allow for the minimization of emissions to the extent practicable during the 30-day period for calculating VOC emissions. *See* 40 C.F.R. § 60.5395. It is unclear why the Agency would include such a provision with respect to the period allowed when determining VOC emissions from storage vessels but not under the gas well affected facility provisions when the same operational and safety concerns are present.

and not accessible, the gas is not pipeline quality, it is not feasible to reach the pipeline, there is not space on the pipeline, or that it is not economical to route to a flow line, that the REC standards do not require routing of flowback gas to a pipeline. Such provisions should be included as a matter of sound engineering, due regard for the feasibility of REC requirements, and safety considerations, as well as a recognition of the realities of the industry;

- The definition of "gas well" creates uncertainty and implementation difficulties—The definition of a "gas well or natural gas well," which is defined as "an onshore well drilled principally for production of natural gas" is overly broad, unclear, and risks significant confusion about the actual scope of this rule. EPA's clarification of the prior definition by removing "at the mouth of the gas well" from the definition does not entirely remedy the underlying problem. The logistics of obtaining the required equipment to comply with the rule, combined with the nebulous definition of *gas well*, will often require operators to forecast what and how the well will produce (how much oil vs. how much gas, *etc.*) in advance of actual production. In the case of a well originally intended to produce natural gas but for which the resulting production is not principally natural gas, the Final Rule will require controls and associated obligations not intended for a well producing primarily oil. Under this scenario, the Final Rule regulates operations outside the rule's scope (*i.e.*, regulating oil not natural gas). Similarly, there are no parts of the rule providing operators with relief or other options in the event production does not turn out to be "principally natural gas," even if the well was drilled principally for such planned production.

- NESHAP reporting requirements apply to NSPS—While the Alliance appreciates EPA's efforts to clarify 40 C.F.R. Part 60 by removing certain citations to performance tests, monitoring, and recordkeeping requirements, the finalized NESHAP requirements will impose burdensome periodic reporting requirements under § 63.766 on storage vessels already subject to the reporting and recordkeeping obligations of Subpart OOOO. This is unnecessary and will create confusion regarding compliance and potential enforcement. More specifically, the reporting of deviations as defined by the Final Rule for any of the numerous monitoring parameters associated with tank vapor controls, the reporting of every vessel to which the rule is applicable for a reporting period, as well as reporting VOC determinations for new tanks less than 6 tpy VOC, are excessively burdensome.

- Malfunction provisions are overly burdensome and inflexible—The Final Rule, while including an affirmative defense for malfunction events, remains overly burdensome and inflexible with respect to how emissions during malfunction events are treated. Specifically, the Final Rule requires operators to include VOC emissions during malfunctions for purposes of the 95 percent control calculation, effectively rendering such emissions part of "normal" operations, including being subject to Potential to Emit ("PTE") calculations (as distinguished from emissions associated with

scheduled maintenance, startups or shutdowns). For example, under the Final Rule, emissions occurring when a combustor or flare has no flame because of a malfunction count towards the 95 percent reduction standard. *See e.g.*, 77 Fed. Reg. at 49,509 ("The affirmative defense provisions . . . ensure that its emissions standards are *continuous* . . .") (emphasis added). By definition, a malfunction is the failure of control or processing equipment to "operate in a normal or usual manner" as a result of unforeseen and unpreventable events. *See* 40 C.F.R. §§ 60.2, 63.2. The Final Rule, by requiring emissions from malfunction events to be included in the 95 percent calculation, turns the notion of a "malfunction" (*i.e.*, an event that is not predictable and not part of normal operations) on its head; effectively treating malfunction emissions as "normal" emissions, despite their unforeseeability. In this respect, the Final Rule disregards well-established precedent requiring CAA/NSPS/NESHAP standards to provide operators flexibility in the case of truly unforeseeable malfunction events.

The affirmative defense does nothing to ameliorate this deficiency. First, it applies only in an enforcement context following a malfunction event. Second, the affirmative defense applies only if the operator can meet the affirmative defense elements, including demonstrating that the event was truly a "malfunction" and not part of normal operations or a recurring pattern. (*See e.g.*, 40 C.F.R. § 63.762, requiring operator to prove, among other things, the emissions resulted from an event that was not part of a recurring pattern or indicative of inadequate design, operation, or maintenance). If the operator is able to meet the affirmative defense elements in a post-event, enforcement context, the excess emissions resulting from the malfunction should not be considered part of normal operations for purposes of inclusion in the 95 percent calculation standard and general PTE calculations for permitting purposes.

- Advanced notification of well completions is impractical and ineffectual—The Alliance appreciates the removal of the 30-day advance notification requirement for well completions as proposed. *See* 77 Fed. Reg. at 49,526-527. However, requiring advance notification of well completions is unnecessary, burdensome for both industry and regulators, and provides no meaningful information in relation to the goals and objectives of the rule. Moreover, it is symptomatic of the fundamental flaw in this rule—it forces operators to prematurely forecast the production quantity and quality from a new well and make significant resource investments based on these forecasts. Given the nature of the industry, and the fairly common variation in production from one hydraulically fractured gas well to the next, sometimes within very close proximity, these forecasts are frequently wrong and the operator will need a mechanism to withdraw or correct its prior statements. The Final Rule does not provide such a mechanism, and it would not need one if advance notice were eliminated upon reconsideration as being unnecessary and difficult to provide with any degree of certainty.

- Deviation reporting and self-certification requirements typical of major sources will be applied to minor sources—The Final Rule requires recordkeeping and reporting for "all deviations during the reporting period in cases where well completion operations with hydraulic fracturing were not performed with the requirements for each gas well affected facility," as well as annual self-certifications, both of which are requirements otherwise applicable only to major sources under Title V. *See* 77 Fed. Reg. at 49,527. These requirements, and the deviation reporting requirement in particular, add yet further recordkeeping and reporting obligations onto an already burdensome rule, create unnecessary enforcement risk, and result in little, if any, environmental benefit from the rule.

  Further, this requirement (the deviation reporting in particular) is another example of the Final Rule's regulation of minor sources as though they were major sources and ignores the significant adverse economic impact to small businesses. *See e.g.*, 42 U.S.C. § 7661f (Title V provisions recognizing the potential serious consequence to small businesses of major source status, providing various forms of relief to these businesses "based on the technological and financial capability of any such small business stationary source"). EPA has provided no basis in the record for these requirements, nor justification that they will not be overly burdensome to the many smaller operators impacted by the rule, such as the majority of the Alliance's members.

- Method 22 monitoring is impracticable and highly burdensome—The Final Rule imposes monthly Method 22 testing for combustion flares at storage vessels, and a requirement to submit a digital color photograph of the exhaust point annotated with the date and time for each test at each emission source under the REC requirements.[9] Monthly Method 22 testing for affected facilities in many rural locations, aside from being a changed requirement from the proposed rule, will be virtually impossible. In numerous, remotely located oil and gas facilities, even a small to medium sized operator would require personnel dedicated almost exclusively to observing multiple flares for long, two-hour stretches, which becomes an impractical task considering the monotony. Moreover, EPA has failed to estimate or include the costs of actually implementing Method 22 testing protocols for the affected facilities under these rules, which are significant. *See generally Regulatory Impact Analysis* (failing to include estimates of the costs of monthly Method 22 inspections and reporting for the thousands of affected facilities, many of which are in remote rural locations). Such an omission renders this requirement arbitrary and capricious. The Alliance expressly

[9] Method 22 testing is used to determine the frequency of fugitive emissions and visible smoke emissions from flares at stationary sources. It is more typically required at larger, more centralized and complex facilities, rather than numerous remotely located minor sources, where such evaluations may be more easily and effectively accomplished through human observation, without the aid of instruments located onsite for a certain prescribed amount of time.

incorporates by reference API's comments with respect to the burdensomeness of requiring monthly Method 22 testing as noted above as part of this Final Rule.

- Inflexible allowance for certain high bleed pneumatics—While the Alliance appreciates that the Final Rule exempts high bleed pneumatics where they are needed for "response time, safety, and actuation of valves," 77 Fed. Reg. at 49,520, these limited exemptions do not go far enough and do not provide the types of exemptions required for practical implementation. There are certain situations where the use of low or intermittent bleed pneumatics is simply impossible. These include where there are impurities in the natural gas that could degrade a low bleed controller, where weather conditions require a high bleed controller, where flow is not sufficient for a low bleed controller, or where electricity is not available. The result is an overly-burdensome regulation with respect to pneumatic controllers, that will sometimes be difficult, if not impossible, to implement. Additionally, the increased probability of low-bleed pneumatic device failure could mean overfill and/or spill or other release events being caused in the name of reducing otherwise modest emissions of methane from a high-bleed device. Such a risk/reward tradeoff is also arbitrary and capricious, in the Alliance's view, and should therefore be rejected upon reconsideration

- Inflexible reciprocating compressor standard—The Final Rule requires compressor packing rods on reciprocating compressors to be "replaced" either every 26,000 hours or 36 months. This standard assumes, at potentially significant cost to the owner/operator, that the reciprocating compressor rods at either 26,000 hours or 36 months have reached the end of their useful life. This may not always be the case, and the standard should provide flexibility to "inspect and maintain" such parts, consistent with manufacturers' recommendations, as opposed to just mandating outright "replacement" in every circumstance.

III. CONCLUSION

The Final Rule remains unduly complex, burdensome, and is not properly or adequately justified due to a severely flawed EPA cost/benefit analysis. The Alliance's own cost-benefit analysis underscores this fundamental failing of the Final Rule. For these reasons, the Alliance requests that EPA grant this Petition for Administrative Reconsideration to correct the numerous flaws discussed above and also noted in API's petitions for reconsideration.

Respectfully submitted,

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Enclosure

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