May, 28, 21013

The Honorable Bob Perciasepe, Acting Administrator
U.S. Environmental Protection Agency
EPA West (Air Docket), Room 3334
1301 Constitution Ave., NW
Washington, DC 20004

Attention: Docket ID Number EPA-HQ-OAR-2010-0505
Submitted via email to *a-and-r-docket@epa.gov*

RE: Comments of the Independent Petroleum Association of America on "Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards," 78 Fed.Reg. 22126 (Apr. 12, 2013). Docket ID No. EPA-HQ-OAR-2010-0505

Dear Acting Administrator Perciasepe:

The Independent Petroleum Association of America ("IPAA") appreciates the opportunity to provide comments on the United States Environmental Protection Agency's ("EPA") rulemaking entitled "Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards," 78 Fed. Reg. 22,126 (April 12, 2013). IPAA represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be the most significantly affected by these proposed regulatory actions. Independent producers develop 95 percent of domestic oil and gas wells, produce 68 percent of domestic oil and produce 82 percent of domestic natural gas. Historically, independent producers have invested over 150 percent of their cash flow back into domestic oil and natural gas development to find and produce more American energy. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy is essential to the national economy.

IPAA believes the majority of the proposed revisions are beneficial to the industry while still protective of the environment. IPAA looks forward to working with EPA to further improve the rule. IPAA also appreciates EPA's willingness to expedite this rulemaking in light of the pending October 15, 2013 compliance deadline for the storage vessel requirements under 40 C.F.R. Part 60 Subpart OOOO. IPAA believes collaboration between the agency and the regulated community will result in workable regulations that are both cost-effective and protective of the environment.

As further discussed later in these comments, IPAA generally supports the following proposed amendments to the existing requirements for storage vessels:

- IPAA supports breaking down storage vessel affected facilities into two categories (i.e., "Group 1" and "Group 2" tanks) to help reduce the demand for control devices and service providers, as well as the proposed extension of the compliance deadline for implementing controls to April 15, 2014. The potential for a shortage of equipment and service providers—even with the extended deadline—remains real for many of the smaller independent producers with less leverage and buying power.
- IPAA strongly supports the proposed streamlined provisions related to continuous compliance demonstration and monitoring requirements during the reconsideration period. IPAA requests that the streamlined provisions be proposed for adoption as the final compliance and monitoring requirements in the anticipated rulemaking to address additional reconsideration issues (expected proposal in December 2013).
- IPAA supports the concept of an alternative mass-based limit for uncontrolled emissions and the ability to remove controls if emissions are demonstrated to fall below an established threshold for a set period of time. Although IPAA appreciates that EPA believes it is inappropriate for the alternative mass-based limit to be the same as the applicability threshold, EPA has failed to provide a reasoned or rational basis for its position. EPA initially justified controls on storage vessels as cost effective at 6 tons per year ("TPY") – not 4 TPY. IPAA believes the alternative mass-based limit should be 6 TPY.
- IPAA supports extending the time period for the submittal of annual reports and compliance certifications from 30 days to 90 days after the end of the given compliance period.
- IPAA supports EPA's effort to align the test protocols for combustion control devices for the NSPS with those found in the applicable National Emission Standards for Hazardous Air Pollutants and the provisions which provide for manufacturer testing provisions that allow for certification of certain specific devices.
- IPAA supports the clarification of the definitions of "storage vessel" and "storage vessel affected facility."

In addition to generally supporting the proposed amendments discussed above, IPAA provides the following comments and suggestions that it believes will further improve the final provisions of the rule.

1. As currently proposed, Group 1 storage vessels are required to comply with certain additional provisions if there is an "event that could reasonably be expected to increase VOC emissions . . . ." 40 C.F.R. § 60.5395(b). The subsection cites the following four "examples" of events, indicating the list is not exhaustive: (i) routing an additional well to the storage vessel that was not previously routed to the vessel, (ii) conducting fracturing on a well routed to the storage vessel, (iii) conducting refracturing on a well routed to the storage vessel, and (iv) any other event that could increase the VOC emissions from the storage vessel affected facility. *Id.* § 60.5395(b)(2)(i)-(iv). IPAA believes the definition of "event" should be limited to the first three examples, as the fourth "example" is so broad and subjective as to provide no clarification whatsoever. To the extent that EPA is unwilling to limit the examples of qualifying "events," the fourth example should be revised to read "any other event that could **reasonably be expected to** increase the VOC emissions from the storage vessel affected facility."

2. As currently proposed, owners and operators of Group 2 storage vessels must determine their VOC emissions by April 15, 2014 or 30 days after startup, whichever is later. *Id.* § 60.5395(c)(1) and (2). If VOC emissions are projected to be equal or greater than 6 TPY, then controls must be installed by April 15, 2014 or 60 days after startup, whichever is later. *Id.* § 60.5395(d). These time periods are simply too short. At a minimum, **90 days** is necessary to conduct the required emissions calculation and install controls. The first 30 days of production normally are not representative of stabilized production from a well, and are subject to variation that could result in the overestimation **or** underestimation of the emissions from storage vessels associated with that well. Thus, at least 45 days is needed to evaluate and accurately calculate projected annual emissions from a storage vessel. Another 45 days—again, at a minimum—would be needed to engage a contractor and install the necessary controls. Providing a total of 90 days to make the initial emissions determination **and** install any necessary controls will ensure a more reliable emissions estimate and afford the regulated community sufficient time to contract for the testing/modeling of emissions and installation of controls. Accordingly, IPAA recommends that EPA extend this compliance period to 90 days.

3. If EPA is unwilling to provide 90 days for operators to conduct their emissions determinations and install necessary controls as requested in Comment No. 2 above, IPAA believes it is appropriate to consider differentiating between storage vessels located at new facilities (or at existing facilities not subject to air quality permitting) versus storage vessels at existing, currently permitted facilities. The primary methodology for projecting emissions from storage vessels involves hiring an outside contractor to visit the site, sample the condensate/liquid, conduct laboratory analysis to generate the condensate characteristics, and then calculate emissions based upon the throughput of the vessel. The logistics of retaining and then scheduling the contractor to perform this work takes time, and there will be instances that producers—especially independent producers—will not likely be able to comply with the 30-day emissions determination for reasons beyond their control (i.e., they could not get a service provider out to the storage vessel in time). Similar issues can arise with regard to the installation of emissions controls. Storage vessels at existing affected facilities with air quality permits within the same formation or drilling characteristics are more likely to have relevant emissions modeling associated with the condensate/liquid produced from the well(s). Consequently, projecting annual emissions should be less time-consuming for these facilities, although IPAA believes that a 60-day compliance period for facilities with existing emissions data on condensate/liquids is necessary to provide the flexibility needed to align contractors for installation of controls. The importance of this issue for independent producers cannot be overstated. The lack of access to or ability to timely contract with service providers will place many of the smaller independent producers at serious risk of noncompliance, through no fault of their own.

4. If EPA is unwilling to adopt a permanent distinction between storage vessels at new and existing affected facilities as advocated in Comment No. 3 above, IPAA suggests that EPA institute an extended compliance period for vessels at new facilities for a period of two years. This will reduce the likelihood that independent producers will be exposed to enforcement due to the lack of available equipment and service providers, while continuing

to ensure that emissions reductions occur in a timely fashion. IPAA encourages EPA to strike an appropriate balance between achieving emissions reductions and the practical realities associated with limited supply of and increased demand for equipment and service providers. Unnecessarily condensed timeframes will have limited benefit to the environment, but will create undue hardship for a segment of the industry that provides a significant portion of the natural gas produced in this country.

5. As indicated above, IPAA supports the proposal to adopt an alternative emission limit of 6 TPY for uncontrolled emissions, and the ability to remove controls if emissions are demonstrated to fall below that threshold for a period of time. As currently proposed, if uncontrolled emissions from the affected facility drop below 4 TPY for a period of 12 consecutive months, the emission controls can be removed. *Id.* § 60.5395(d)(2). If at some point after the 12 month period the emissions rise above an estimated 4 TPY, however, controls must be reinstalled. *Id.* IPAA suggests certain revisions to these provisions, which would provide the same degree of environmental protection while reducing the burden and cost of compliance. In the response to comments document associated with the final rule, EPA calculated the cost effectiveness of controls at the 6 TPY threshold to be approximately $3400 per ton. *Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 40 CFR Parts 60 and 63, Response to Public Comments on Proposed Rule August 23, 2011 (76 FR 52738),* at 108-110. Commenters argued that even a TPY threshold above10 TPY would result in a prohibitively high cost effectiveness of over $5000 per ton. EPA did not dispute the commenters calculations, but merely stated that EPA felt their "different source of cost information" . . . "developed specifically for this industry . . . may be more accurate than the more generalized Control Cost Manual analysis." *Id*. Subsequent studies and reports have called into question EPA's emissions estimates associated with hydraulic fracturing. IPAA believes that EPA has failed to justify its proposed alternative mass emission limit of 4 TPY and that the alternative limit should be 6 TPY. Additionally, instead of requiring 12 months of data demonstrating uncontrolled emissions below 4 TPY, IPAA believes that six months of data demonstrating emissions below 6 TPY is sufficient. As EPA has acknowledged, emissions from the vast majority of wells continue to decline over time and seldom increase without some intervening event. Thus, six months of data below an annual emission rate of 6 TPY is more than sufficient to demonstrate that the well is in steady decline and VOC emissions will remain below the 6 TPY threshold. IPAA also suggests that the obligation to conduct monthly monitoring be discontinued after six months of data demonstrating VOC emissions below 4TPY, absent an intervening event as set forth in 40 C.F.R. § 60.5395(b)(2).

6. As discussed above in Comment No. 5, under the current proposal, controls on storage vessels would need to be reinstalled if VOC emissions increase above the 4 TPY threshold. IPAA suggests that the threshold for reinstalling controls should be the same as the 6 TPY applicability limit for storage vessels initially. EPA has not provided a reasonable basis for imposing a different applicability threshold for tanks that initially had controls on them versus "new" vessels that are evaluating applicability for the first time. For example, if an operator needs to install a storage vessel at a new well pad and has two identically sized vessels at his disposal for installation—a brand new tank that has never been "installed"

and a tank that became an affected facility because its annual emissions were at one point above 6 TPY and is no longer needed at an older well—the incentive will be to install a new storage vessel to take advantage of the higher 6 TPY threshold, despite the fact that there is absolutely no difference between the two units. The different thresholds lack a supportable basis from an environmental standpoint and create an incentive to waste resources and unnecessarily drive up costs to producers.

7. In addition to the practical limitations of basing annual emissions on the first 30 days of production, IPAA is concerned about the enforcement ramifications of inaccurately estimating annual emissions based on this period. Essentially every estimate of annual emissions will be based on projected throughput over the course of a year. Due to the inherent uncertainty in projecting the production of a given well, there should be provisions included in the regulations that provide reduced enforcement exposure if producers diligently monitor their throughput (and hence their emissions) and promptly report any errors discovered with regard to the annual emissions estimate. IPAA appreciates that EPA must create the proper incentive for operators to make every effort to estimate their annual emissions accurately at the outset. However, IPAA believes that EPA also should consider that, unlike many other industrial processes, predicting the production of a given well is not a precise science. IPAA recommends that EPA include in the final version of this rule—or propose to include in the second reconsideration rulemaking scheduled for December 13, 2013—provisions that provide operators reduced enforcement exposure if errors in annual production based emissions calculations are promptly reported (e.g., within 30 days) to EPA (or the implementing state/local authority) and appropriate controls are installed within an additional 30 days. Such notification would require an explanation of why the initial annual emissions estimate was incorrect. IPAA further understands EPA's concerns regarding establishing a precedent in terms of reduced enforcement exposure for those entities that fail to make accurate emissions estimates. Again, the lack of predictability in estimating emissions from a given well is unlike projecting emissions from operations in other industries and thus gives EPA a basis for differential treatment. EPA has acknowledged such uncertainty in the regulations associated with greenhouse gas reporting and made certain accommodations accordingly, e.g. 40 C.F.R. § 98.3 (h). IPAA would be pleased to meet with EPA to discuss potential regulations that provide the proper incentive for producers to provide emissions estimates predicted on best engineering judgment while making allowances for unforeseen circumstances which could result in errors in the initial emission estimate.

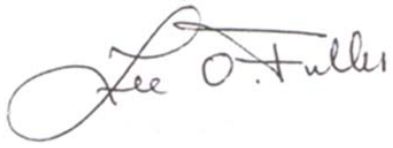
8. As indicated above, IPAA strongly supports the streamlined compliance monitoring provisions proposed to be instituted during reconsideration of issues raised in the various reconsideration petitions. The existing provisions in the current rule are unnecessary to ensure compliance and are extremely burdensome to the smaller independent operations. As proposed, the monthly inspections and obligations for prompt repairs can be accomplished with existing personnel and not significantly add to the cost of compliance while ensuring that the required emissions controls are operating properly. The reasons that EPA proposed to utilize the streamline provisions and the benefit to industry will not change when the reconsideration rulemakings come to a close. The justifications for the

streamlined provisions during the reconsideration period will continue to be valid and warrant continuation of the streamlined provisions after the reconsideration rulemaking.

9. One additional "global" revision to the rules that would greatly reduce the inspection and monitoring obligations is to allow for proof of inspection and monitoring to be kept onsite, at the relevant field office or to be made available upon request. Many affected vessels are located in extremely remote areas and protecting such records from exposure to the environment is difficult. Additionally some operators conduct inspections and monitor certain equipment electronically, and therefore do not always generate "paper copies" on location. IPAA appreciates the need to record and retain inspection and monitoring records, but dictating that hard copies be maintained onsite is not necessary and may not be the best or most feasible way to retain the important information. Providing the operators the requested flexibility would benefit industry without harming the environment or reduce EPA's ability to monitor compliance effectively.

In addition to the comments provided above, IPAA endorses the comments of AXPC and ANGA. As indicated initially, IPAA appreciates the opportunity to provide comments on the proposed rule and would be happy to have further discussion with the agency regarding the issues raised above. Please contact me or Matt Kellogg at 202.857.4722 or Jim Elliott at 202.361.8215 if you have any questions regarding these comments.

Sincerely,



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