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PERMIAN BASIN
PETROLEUM ASSOCIATION



Director Shalanda Young
U.S. Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Acting Administrator Dominic Mancini
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

July 21, 2022

Dear Director Young and Acting Administrator Mancini,

The undersigned organizations – representing the backbone of America’s oil and natural gas industry – request that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) classify the recently announced Environmental Protection Agency (EPA) action titled “Redesignation of Portions of the Permian Basin for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)” (RIN 2060-AV68) as a “significant regulatory action” under Executive Order (E.O.) 12866, “Regulatory Review and Planning.”

This action was published for the first time in the Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions and was classified by EPA as “nonsignificant.” We believe such a classification is inappropriate as this action is likely to be economically significant, raises novel energy policy issues at conflict with the President’s recently stated priority for “[his] administration [to] us[e] every tool at our disposal to protect American businesses and consumers from rising prices at the pump” following the Russian invasion of Ukraine,¹ and materially alters the budgetary impacts to the United States Treasury due to the impacts on onshore federal oil and natural gas production.

We also ask that, should EPA pursue the discretionary redesignation, the agency seek public comment during the redesignation process and before making final redesignation decisions just as it recently did when it issued the notice entitled “Intended Air Quality Redesignation for the 2008 Lead National

¹ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/22/remarks-by-president-biden-announcing-response-to-russian-actions-in-ukraine/>

Ambient Air Quality Standards; Canton, Ohio; Stark County, Ohio: Notice of Availability and Public Comment Period.”² The opportunity for public input will provide the agency valuable information to consider before making final redesignation decisions for the Texas and New Mexico counties at issue in the Permian Basin. We strongly urge the Agency to provide a 90-day public comment period due to the time required to review the extensive monitoring and modeling data and EPA analysis that would serve as the basis for a proposal of this scope.

The Permian Basin is the most productive oil field in the country and accounts for nearly 40% of all oil and 15% of the natural gas produced in the United States.³ The U.S. Energy Information Administration forecasts that average annual crude oil production in the Permian Basin will reach 5.3 million barrels per day (b/d) in 2022 and 5.7 million b/d in 2023⁴; this amount of crude is capable of being refined into roughly 100 million gallons of gasoline a day.⁵ Direct employment from the oil and natural gas industry accounts for over 660,000 jobs in Texas and New Mexico,⁶ with nearly 90,000 oil and natural gas jobs in the Permian Basin.⁷ The value of the Permian for domestic energy production and for the energy security of our nation and our allies simply cannot be overstated.

In 2017, the EPA designated nearly all counties in New Mexico and Texas – including counties in the Permian Basin – as “Attainment/Unclassifiable” for the 2015 ozone NAAQS.⁸ EPA is now considering a discretionary redesignation for portions of certain counties in New Mexico and Texas located in the Permian for the 2015 ozone NAAQS under Clean Air Act section 107(d)(3).

If any county or counties are redesignated to “nonattainment,” permit requirements for oil and natural gas operations (as well as other operators) in the affected area(s) will change immediately, and the state(s) will be required to revise and submit a new State Implementation Plan to bring the area(s) into attainment with the 2015 ozone NAAQS. The impacts of redesignation of portions of the Permian for ozone NAAQS could lead to difficulties and delays in permitting new or modified oil and natural gas facilities, require existing facilities to deploy additional costly control techniques, purchase off-sets, or potentially shut down completely. Such impacts could decrease domestic oil and natural gas production at a time when gasoline prices are at record highs and the energy needs of our allies have rarely – if ever – been greater. Furthermore, given the significant amount of federal land in the Permian Basin, particularly in New Mexico,⁹ impacts to oil and natural gas operations, including a potential chilling effect on new investments across the entire basin, will likely have a material effect on revenues raised from federal onshore leasing, including rents and royalties. At the same time, changes to permitting requirements could have the unintended consequence of slowing the approval of oil and natural gas infrastructure designed to reduce greenhouse gas emissions across the basin. Importantly, the proposed

² 87 Fed. Reg. 26147 (May 3, 2022).

³ https://www.eia.gov/maps/pdf/Permian-pl_Wolfcamp-Bonespring-Delaware.pdf

⁴ U.S. Energy Information Administration. Short-Term Energy Outlook. July 2022. At pg. 9. *Available at:*

https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf

⁵ <https://www.eia.gov/energyexplained/oil-and-petroleum-products/refining-crude-oil.php>

⁶ PriceWaterhouseCoopers. 2019. Impacts of the Oil and Natural Gas Industry on the US Economy in 2019.

Available at: <https://www.api.org/-/media/Files/Policy/American-Energy/PwC/API-PWC-Economic-Impact-Report.pdf>

⁷ <https://thehennessygroup.com/87000-people-employed-in-permian-oil-and-gas-in-2019/>

⁸ 82 Fed. Reg. 54232 (Nov. 16, 2017).

⁹ https://en.wikipedia.org/wiki/Federal_Lands#/media/File:Map_of_all_U.S._Federal_Land.jpg

EPA action in the Permian is an entirely new effort, and we have yet to see any of the justification by the agency to warrant it.

As such, our organizations believe the Permian Basin ozone NAAQS discretionary redesignation classifies as a “significant regulatory action” under Sec. 3(f) of E.O. 12866 for three reasons:

- 1) It is likely to have an annual effect on the economy of \$100 million or more;
- 2) It is likely to materially affect the exploration, production, and transmission of oil and natural gas in the nation’s most productive oil field; and
- 3) It raises novel policy issues regarding the Biden Administration’s call on the oil and natural gas industry to increase U.S. production in the wake of the Russian invasion of Ukraine and record high energy prices.¹⁰

In accordance with E.O. 12866, significant regulatory actions should be submitted for review to OIRA for consideration by the White House and other relevant federal agencies.

We recognize that the “Guidance for Implementing E.O. 12866, Appendix C,” identifies statutorily mandated “area designations of air quality planning purposes” in a list of “regulatory actions exempt from centralized regulatory review.”¹¹ This action, however, is different in that it is a discretionary redesignation. In our assessment, it does not qualify for the “area designations” exemption from regulatory review as it uses authorities that are beyond those required by the Clean Air Act. Also, according to EPA’s website, there are no design values in the Permian Basin in Texas that are above the 2015 ozone NAAQS levels so it would require EPA to use a novel policy interpretation to determine those areas are in nonattainment.

In summary, the potential economic impacts and critical energy policy issues related to this action warrant regulatory review by you and your staff to avoid detrimental impacts, including the potential for increased operating expenses, decreased federal leasing revenues, permitting delays, and decreased oil and natural gas production in the nation’s most productive basin. Regulatory review of this action in the Permian is even more important as we face rising geopolitical volatility and record high energy costs.

Thank you for your consideration of this request. If you have any questions, please contact API Senior Vice President of Policy, Economics and Regulatory Affairs Frank Macchiarola at macchiarolaf@api.org.

Sincerely,

American Petroleum Institute (API)
American Exploration & Production Council (AXPC)
Independent Petroleum Association of America (IPAA)
Texas Oil & Gas Association (TXOGA)
Permian Basin Petroleum Association (PBPA)
GPA Midstream Association
Energy Workforce & Technology Council

¹⁰ See *supra* at footnote 1; see also Department of Energy Secretary Granholm March 9, 2022 statements at CERAWEEK, calling on the oil and natural gas industry to be “producing more right now if and when you can” and stating that “right now we need oil and gas production to rise to meet current demand.”

(<https://www.politico.com/news/2022/03/09/granholm-calls-oil-companies-increase-production-00015802>)

¹¹ Guidance for Implementing E.O. 12866 (Oct. 12, 1993).

Cc: Brian Deese, Director, White House National Economic Council
Zach Butterworth, Director, Private Sector Engagement at The White House
Michael Regan, Administrator U.S. EPA
Joseph Goffman, Principal Deputy Asst. Administrator, U.S. EPA Office of Air and Radiation
Victoria Arroyo, Associate Administrator, U.S. EPA Office of Policy
Earthea Nance, Regional Administrator, U.S. EPA South Central Region (Region 6)