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February 23, 2023

The Honorable Michael S. Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Proposed Consent Decree, Clean Air Act Citizen Suit
Docket ID No. EPA-HQ-OGC-2023-0028

Dear Administrator Regan:

The following Comments on the proposed consent decree referenced above ("Proposed CD") are submitted on behalf of the Independent Petroleum Association of America ("IPAA"). IPAA has been actively involved in the rulemaking process for the new source performance standards ("NSPS") and national emissions standards for hazardous air pollutants ("NESHAP") as originally proposed on August 23, 2011.[1] IPAA supported the effort to bifurcate the proposed NSPS rule and the proposed NESHAP rule which was ultimately granted by the U.S. Court of Appeals for the District of Columbia in *American Petroleum Institute v. EPA*, No. 12-1405. Said decision held the NESHAP rulemaking in abeyance and required EPA to provide the court and parties periodic updates which IPAA has received. The Proposed CD is a function of the typical "sue and settle" approach taken by many environmental organizations.

The Proposed CD is inappropriate, improper, and inadequate under Section 113(g) of the Clean Air Act ("CAA") and should be withdrawn and withheld pending further analysis. Section 113(g) of the CAA states (in relevant part):

> **(g)Settlements; public participation**
> At least 30 days before . . . the Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter.

The Proposed CD presents a very narrow/selective review of the relevant facts – it lacks historic perspective and it fails to acknowledge the dramatically changing regulatory landscape of the oil and natural gas industry.

[1] 76 FR 52738 (Aug. 23, 2011).

1. Subpart OOOO (and progeny) Control Hazardous Air Pollutants.

As noted above, EPA proposed in 2011 the NESHAP and NSPS as a combined rule package. NSPS are established pursuant to Section 111 of the CAA. NESHAP are established pursuant to Section 112. The criteria and requirements on EPA to justify and support regulations under these two sections of the CAA warrant separate rulemakings. That said, EPA should not and cannot conduct separate rulemakings in "silos". The reality is, and perhaps, EPA's initial motivation for proposing rules under both sections of the CAA in a combined rulemaking, is that controls to reduce volatile organic compounds("VOCs")/methane pursuant to NSPS are often if not always the same controls that will reduce hazardous air pollutants ("HAPs") pursuant to NESHAP. The regulations in place since 2011 to control VOCs under 40 CFR Part 60, Subpart OOOO; modified in 2016 under Subpart OOOOa; and proposed in 2021 under Subpart OOOOb and Subpart OOOOc will not only reduce VOCs and methane; they will also reduce HAPs. The regulations promulgated (or to be promulgated) under 40 CFR Part 60 will reduce emissions of HAPs by reducing leaks and combusting emissions of VOCs and methane when they cannot be captured and reintroduced to the process. These same "controls" will reduce HAPs – typically with the same degree of reduction efficiency.

2. Proposed Deadlines in the Proposed CD Have No Justification.

The Proposed CD proposes two different rulemaking timelines: one for "involving provisions of affirmative defense to civil penalties for violations of emissions standards caused by malfunctions"; and a different timeline for "all 'necessary' revisions (taking into account developments in practices, processes, and control technologies to subparts HH and HHH under Section 111(d)(6) of the …" CAA. The timelines for the two rulemakings in the Proposed CD lack any justification for the timeframes – simply, because the parties agreed to it. No justification is provided as to why the more truncated timeframe for the malfunction/affirmative defense issue. More problematic is paragraph 5 of the Proposed CD relating to any "necessary" revisions under subparts HH and HHH. By EPA's own admission the final rule must take into consideration any "developments in practices, processes, and control technologies . . .)." Admittedly, this seems to limit considerations relevant to subparts HH and HHH, but IPAA argues that EPA's failure to consider the controls implemented and to be implemented under Subpart OOOOa, b, and c, which also control HAPs, renders EPA Proposed CD not only inappropriate and improper, but also arbitrary and capricious – remember, EPA started this rulemaking for both the NESHAP and NSPS in the same proposal in 2011.

3. Reductions in HAPs Pursuant to NSPS Will Render EPA's Current Analysis Irrelevant and EPA's Limited Resources Should Be Focused Elsewhere.

As a result of the Proposed CD, EPA has targeted nine companies currently subject to Subpart HH and nine companies subject to Subpart HHH. These eighteen companies received

requests pursuant to Section 114 of the CAA. While Section 114 of the CAA is not without limit in its scope, the cost of complying with EPA's requests is tremendous.[2] What is more egregious is that the information being collected by EPA from these 18 companies will be of limited use to EPA as the emissions being reported pursuant to the Section 114 requests will change dramatically as Subparts OOOO b and c are implemented. The information collected in the next year or more will be of limited use to EPA's regulatory policy making. IPAA suggests that EPA should reevaluate its regulatory priorities and spend taxpayers' money on more appropriate regulatory priorities where the data will not become inaccurate and irrelevant before EPA can make policy determinations based on the data collected.

IPAA appreciates the opportunity to comment on the Proposed CD and invites the opportunity to have additional discussions regarding the Proposed CD and future NESHAP rulemakings.

Sincerely,

/s/ James D. Elliott

James D. Elliott, Esq.
Counsel for IPAA

[2] It is not lost on industry that EPA limited this round of information requests under Section 114 to less than 10 companies under each Subpart to avoid certain requirements of the Paperwork Reduction Act. It is also telling that certain instructions in the attachments to the Section 114 requests imply the attachments were based on an industrywide information collection request in 2015. The cost to comply with these requests is tremendous and EPA should not be able to skirt Paperwork Reduction Act requirements by randomly selecting, or perhaps targeting, 18 companies.