**Appendix A**

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| STATE OF NEW YORK, *et al.*,<br><br>Plaintiffs,<br><br>ENVIRONMENTAL DEFENSE FUND,<br><br>Plaintiff-Intervenor,<br><br>v.<br><br>ANDREW WHEELER, *et al.*,<br><br>Defendants. | Civil Action No. 18-cv-0773 (RBW) |

**DECLARATION OF ASSISTANT ATTORNEY GENERAL**
**MORGAN A. COSTELLO**

I, Morgan A. Costello, declare as follows:

1. I am an Assistant Attorney General in the Environmental Protection Bureau in the office of Letitia James, Attorney General of the State of New York, attorney for plaintiff State of New York in this matter. I submit this declaration in support of Plaintiffs' Opposition to Defendants' Motion to Stay Pending Conclusion of Rulemaking in the above-captioned matter.

2. Attached to this declaration as Attachment 1 are some of the documents produced so far by defendants the United States Environmental Protection Agency and Andrew D. Wheeler, in his official capacity as the Acting Administrator (collectively EPA) during discovery dated between February 1, 2017 and March 2, 2017 that relate to the basis for EPA's withdrawal of an information collection request (ICR) that EPA had

earlier issued specifically for the purpose of complying with its mandatory statutory duty under the Clean Air Act to promulgate regulations to address methane emissions from existing sources in the oil and natural gas sector.

3. Since the Court's order on May 14, 2019 requiring EPA to respond in full to the bulk of Plaintiffs' requests for production of documents (Dkt No. 50), EPA has made six productions of documents subject to the Protective Order in this case (Dkt No. 51); seven productions of documents not subject to the Protective Order; and one production of CBI-containing materials subject to the Protective Order. EPA has also produced three iterations of a non-final privilege log and has agreed to produce a final privilege log with supporting declaration(s) by the November 8, 2019 deadline for completion of document production.

4. Counsel for EPA, Plaintiff-Intervenor EDF, and lead State Plaintiffs have held regularly-scheduled bi-weekly calls to discuss and promptly resolve any concerns raised by EPA related to the scope or timing of its production of documents or withholding of documents on the basis of asserted privileges. To ensure that the case moves forward expeditiously towards the deadlines established by the Court for completion of document production and the discovery deadline, Plaintiffs have agreed in good faith to several additional limits on the scope of document discovery and documents required to be listed on EPA's privilege log. For instance, Plaintiffs agreed to additional limited search terms and date ranges for EPA's review and production of documents collected from five custodians.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Albany, New York on October 18, 2019.

/s/ Morgan A. Costello
Morgan A. Costello

# ATTACHMENT 1

**From:** Kathleen Sgamma <ksgamma@westernenergyalliance.org>
**To:** Kreutzer, David
**Sent:** 2/1/2017 2:57:31 PM
**Subject:** Question on ICR

Hello David,

I know you're underwater right now, but do you have time to talk about the ICR that is ongoing for O&G companies. There's confusion about the deadlines for submitting data. Thank you.

Kathleen Sgamma
President
Western Energy Alliance
1775 Sherman St., Suite 2700
Denver, CO 80203
(303) 501-1059 direct
(303) 623-0987 main
ksgamma@westernenergyalliance.org
westernenergyalliance.org
@KathleenSgamma

**From:** Kathleen Sgamma <ksgamma@westernenergyalliance.org>
**To:** Kreutzer, David
**Sent:** 2/2/2017 10:26:57 AM
**Subject:** RE: Question on ICR

Thank you so much. My afternoon blew up, but I tried calling you this morning but your voicemail's not set up. Please call when you get a chance.

---

**From:** Kreutzer, David [mailto:kreutzer.david@epa.gov]
**Sent:** Wednesday, February 01, 2017 1:23 PM
**To:** Kathleen Sgamma
**Subject:** RE: Question on ICR

Sure. I have meetings until about 5:30. I'll try calling then. If you don't hear from me by 6 EST, feel free to call me at 202.564.3113 or 202.384.8061 (cell).

**From:** Kathleen Sgamma [mailto:ksgamma@westernenergyalliance.org]
**Sent:** Wednesday, February 1, 2017 2:58 PM
**To:** Kreutzer, David <kreutzer.david@epa.gov>
**Subject:** Question on ICR

Hello David,

I know you're underwater right now, but do you have time to talk about the ICR that is ongoing for O&G companies. There's confusion about the deadlines for submitting data. Thank you.

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ksgamma@westernenergyalliance.org
westernenergyalliance.org
@KathleenSgamma

**From:** Kathleen Sgamma <ksgamma@westernenergyalliance.org>
**To:** Kreutzer, David
**CC:** Ryan Streams
**Sent:** 2/6/2017 2:52:58 PM
**Subject:** ICR
**Attachments:** EPA ICR Supporting Statement 09-22-2016.pdf

David,

As promised, here is the basic information on the ICR and our comments to the 1st and 2nd draft. Ryan can provide much more detail than I, but the supporting statement attached has a fairly brief explanation in the first two pages. Thank you for looking into it. Please call me or Ryan with any questions once you've had a chance to look at it.

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ksgamma@westernenergyalliance.org
westernenergyalliance.org
@KathleenSgamma

**From:** Kathleen Sgamma <ksgamma@westernenergyalliance.org>
**To:** Kreutzer, David
**Sent:** 2/10/2017 2:09:04 PM
**Subject:** Information on the ICR

Hello David,

Thank you for your call today. In case the information is helpful, here's some background from our attorney.

The ICR's were issued in two parts under EPA's section 114 information gathering request authority. The first part (Part 1) applies to every single operator in the country. Part II was a more targeted information request for certain operators, but asks for much more detailed and onerous information. Both parts impose significant burdens on operators in terms of collecting and submitting data. They also both raise significant CBI issues. The ultimate purpose of the ICR under the Obama EPA was to gather necessary information in advance of promulgating section 111(d) air quality standards for *existing* as opposed to *new* oil and gas sources.

EPA's section 114 authority is very broad, and is most often used for single facilities or a single company as a predicate for an enforcement action. So in that sense, this industry-wide information request is a bit unusual, although not without precedent (EPA did these for refineries). Fortunately, there are no statutory deadlines under section 114 for responding and extensions are routinely granted by EPA upon request. In fact, here limited extensions have been granted for many operators required to respond to Part I. In this respect, section 114 is somewhat informal compared with other provisions of the Clean Air Act.

There are several key rationales for either eliminating the ICR or at least extending the response date nationwide for every operator right now. First, it seems unlikely that the new EPA will approach this "existing" source regulation in the same way. If there is any chance that this EPA will not promulgate an existing source regulation under section 111(d), then it does not make sense for every operator in the country to go through this burdensome information request. At a minimum, I would think the new EPA would want to carefully discuss this issue given the significance of an existing source rule that would literally apply to every facility in the country (putting many marginal wells and smaller operators out of business). Second, an existing source regulation under 111(d) may only go forward once there has been a new source performance standard promulgated under section 111(b). EPA has issued two NSPS for oil and gas – Quad O and Quad Oa. However, both rules are being challenged in the courts. Should they be struck down or otherwise pulled back by EPA, it would have no statutory authority to even promulgate an existing source regulation under 111(d). Thus, it seems the ICR process should be put on hold for that reason as well.

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ksgamma@westernenergyalliance.org
westernenergyalliance.org
@KathleenSgamma

**From:** Kreutzer, David </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=52652127F1174690A5223B2A6DF21968-KREUTZER, D>
**To:** Schnare, David
**Sent:** 2/10/2017 2:12:41 PM
**Subject:** FW: Information on the ICR

Please call. I just talked with Sarah Dunham. Looks like this will be easier than we thought.

**From:** Kathleen Sgamma [mailto:ksgamma@westernenergyalliance.org]
**Sent:** Friday, February 10, 2017 2:09 PM
**To:** Kreutzer, David <kreutzer.david@epa.gov>
**Subject:** Information on the ICR

Hello David,

Thank you for your call today. In case the information is helpful, here's some background from our attorney.

The ICR's were issued in two parts under EPA's section 114 information gathering request authority. The first part (Part 1) applies to every single operator in the country. Part II was a more targeted information request for certain operators, but asks for much more detailed and onerous information. Both parts impose significant burdens on operators in terms of collecting and submitting data. They also both raise significant CBI issues. The ultimate purpose of the ICR under the Obama EPA was to gather necessary information in advance of promulgating section 111(d) air quality standards for *existing* as opposed to *new* oil and gas sources.

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ksgamma@westernenergyalliance.org

**From:** Kreutzer, David </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=52652127F1174690A5223B2A6DF21968-KREUTZER, D>
**To:** Dunham, Sarah
**Sent:** 2/10/2017 2:24:15 PM
**Subject:** ICR

Sarah,

Re: Quashing the ICR

Could you draft whatever request you would need from Catharine and send it to her, Schnare, and me?

Thanks,

David

David W. Kreutzer, Ph.D.
202.564.3113

**From:** Jackson, Ryan </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY>
**To:** Schnare, David
**Sent:** 2/27/2017 10:29:02 PM
**Subject:**

I've been meaning to ask this all day and we have time tomorrow morning some, but what can be done on the ICR presently?

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

**From:** Dunham, Sarah </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A9444681441E4521AD92AE7D42919223-SDUNHAM>
**To:** Grantham, Nancy
**CC:** Schnare, David; Konkus, John; Jackson, Ryan
**Sent:** 2/28/2017 7:35:03 AM
**Subject:** Re: CAA 114 Methane information request

Yes, we'll work with Nancy.

On Feb 28, 2017, at 7:32 AM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Thanks ... sarah and I will connect thanks ng

**Nancy Grantham**
**Office of Public Affairs**
**US Environmental Protection Agency**
**202-564-6879 (desk)**
**202-253-7056 (mobile)**

**From:** Schnare, David
**Sent:** Tuesday, February 28, 2017 7:27 AM
**To:** Dunham, Sarah <Dunham.Sarah@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>
**Cc:** Jackson, Ryan <jackson.ryan@epa.gov>
**Subject:** CAA 114 Methane information request

Sarah:

Please work with Nancy to prepare a press release to the appropriate trade press to announce that we are withdrawing our request for information on methane releases that we made under CAA Sec. 114, and that we are preparing letters to the 15,000 persons who originally received that request. In addition, please prepare a one-pager indicating the schedule with which we can get those letters out.

We need to indicate that we are withdrawing both parts 1 and 2 of the request.

If you have questions, please let me know.

dschnare

**From:** Kime, Robin </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7EF7B76087A6475B80FC984AC2DD4497-RKIME>
**To:** Dravis, Samantha
**CC:** Schnare, David
**Sent:** 2/28/2017 6:30:54 PM
**Subject:** Re:

Hi
Checking.

Sent from my iPhone

On Feb 28, 2017, at 6:25 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Could one of you send me the notice of the ICR withdrawal for methane? Where is that in the process?

**From:** Dravis, Samantha </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ECE53F0610054E669D9DFFE0B3A842DF-DRAVIS, SAM>
**To:** Kime, Robin
**Sent:** 3/1/2017 10:32:20 AM
**Subject:** RE: Methane ICR - request for notice and update

Do you want to come by really quick and lets set up you and Carolyn having access to my calendar?

**From:** Kime, Robin
**Sent:** Wednesday, March 1, 2017 10:27 AM
**To:** Dravis, Samantha <dravis.samantha@epa.gov>
**Subject:** Methane ICR - request for notice and update

Hi
This just in.

**From:** Rees, Sarah
**Sent:** Wednesday, March 01, 2017 10:24 AM
**To:** Kime, Robin <Kime.Robin@epa.gov>
**Cc:** Kenny, Shannon <Kenny.Shannon@epa.gov>
**Subject:** RE: Request for notice and update

Confirmed that this decision has been made and OAR is working on the withdrawal. They have some comms materials and are putting the notice together. We've asked to see the materials in advance and also timeline as to when they will be ready. I will send to Samantha as soon as I have more information.

**From:** Grantham, Nancy </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=12A3C2ED7158417FB0BB1B1B72A8CFB0-GRANTHAM, NANCY>
**To:** Schnare, David
**CC:** Grantham, Nancy; Konkus, John
**Sent:** 3/1/2017 4:58:50 PM
**Subject:** FW: Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx
**Attachments:** Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

Please see attached. Let us know how to proceed.

Thanks ng

**Nancy Grantham**
**Office of Public Affairs**
**US Environmental Protection Agency**
**202-564-6879 (desk)**
**202-253-7056 (mobile)**

**From:** Minoli, Kevin
**Sent:** Wednesday, March 01, 2017 4:50 PM
**To:** Grantham, Nancy <Grantham.Nancy@epa.gov>
**Cc:** Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
**Subject:** Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

Nancy- Here are our suggested edits. As I mentioned on the phone, before taking this action OAR would like to receive direction from the Administrator or Chief of Staff, consistent with what we understand to be the protocol at the moment. Thanks, Kevin

**From:** Davis, Patrick </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR>
**To:** Kreutzer, David
**Sent:** 3/1/2017 5:14:27 PM
**Subject:** ICR

Hi David,

If you run across the correspondence dealing with the ICR we talked about late today could you please send it to me?

Thanks,
Patrick Davis

Sent from my iPhone

**From:** Schnare, David </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=96FC79D4007541A69E8B3CF57F6E13B0-SCHNARE, DA>
**To:** Minoli, Kevin; Kenny, Shannon; Rees, Sarah; Dunham, Sarah
**Sent:** 3/2/2017 8:56:30 AM
**Subject:** Direction from the Administrator
**Attachments:** Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

Attached is the near final draft of the press release going out today on the CAA 114 methane issue (a quote is being added).

The Administrator wants this turned into a Notice for Federal Register publication and he wants it over there today for publication tomorrow. OGC drafts. It can be literally three sentences long.

Please let me know when this has been sent to OFR.

dschnare

**From:** Kathleen Sgamma <ksgamma@westernenergyalliance.org>
**To:** Kreutzer, David
**Sent:** 3/2/2017 4:54:32 PM
**Subject:** RE: Question on ICR

From the bottom of my heart, thank you.

---

**From:** Kreutzer, David [mailto:kreutzer.david@epa.gov]
**Sent:** Wednesday, February 01, 2017 1:23 PM
**To:** Kathleen Sgamma
**Subject:** RE: Question on ICR

Sure. I have meetings until about 5:30. I'll try calling then. If you don't hear from me by 6 EST, feel free to call me at 202.564.3113 or 202.384.8061 (cell).

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**From:** Kreutzer, David </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=52652127F1174690A5223B2A6DF21968-KREUTZER, D>
**To:** Kathleen Sgamma
**Sent:** 3/2/2017 5:11:32 PM
**Subject:** Re: Question on ICR

Thank you for bringing it to our attention. There was nobody here (political or career) who thought the ICR made sense given the changes in the associated policy. However, with the all the commotion of the transition, the very sensible proposal to cancel the ICR fell through the cracks.

Kudos to you for being alert!

David

Sent from my iPhone

On Mar 2, 2017, at 4:55 PM, Kathleen Sgamma <ksgamma@westernenergyalliance.org> wrote:

From the bottom of my heart, thank you.

---

**From:** Kreutzer, David [mailto:kreutzer.david@epa.gov]
**Sent:** Wednesday, February 01, 2017 1:23 PM
**To:** Kathleen Sgamma
**Subject:** RE: Question on ICR

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**Sent:** Wednesday, February 1, 2017 2:58 PM
**To:** Kreutzer, David <kreutzer.david@epa.gov>
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ksgamma@westernenergyalliance.org
westernenergyalliance.org
@KathleenSgamma

**To:** Fred Barnes[fwbarnes@weeklystandard.com]
**From:** Jackson, Ryan
**Sent:** Tue 11/7/2017 4:35:21 PM
**Subject:** RE: getting back with you
Pruitt Elected Officials Tracker.xlsx

One other attachment, our intergovernmental team reminded me of additional meetings, so I thought I would add the entire list of Congressional members during his Hill days and a few meetings at EPA and his meetings with governors in his trips. Some were at EPA, but a lot were done in his trips. One or two of which you'll be on and see.

Thanks again.

**From:** Jackson, Ryan
**Sent:** Monday, November 6, 2017 6:53 PM
**To:** 'Fred Barnes' <fwbarnes@weeklystandard.com>
**Subject:** getting back with you

Fred, thanks again for letting me contribute to your piece.

For the regulatory actions, attached is a roster we keep to keep things concise. For FY 2017, EPA promulgated 17 actions subject to EO 13771: 1 regulatory action and 16 deregulatory actions. 6 of the actions had cost or cost-savings that could be calculated, which amounted to a net annualized cost savings of $70 million. However, future cost-savings could result from taking action on any of the burdensome rules from the previous administration, such as:

- CPP, which could cost $5 to 8 billion in 2030. EPA estimated a loss of roughly 34,000 jobs in 2030, while the Energy Information Administration (EIA) estimated a loss of about 376,000 jobs under the CPP in 2030.

- Steam Electric ELG, which could cost $1.2 billion per year in the first five years with an annualized cost of $480 million. EPA estimated the rule could reduce total operations and maintenance labor at coal-fired electric plants by the equivalent of 835 full-time employees in 2030.

- WOTUS, with an annualized cost of approximately $150-500 million.

- CCR Rule, with an annualized cost of up to $735 million.

- Methane ICR, with compliance costs exceeding $40 million.

*Attached* is the more full list.

I also mentioned state implementation plans. These are the plans states send to EPA to approve so states can take steps to set their air quality standards. Already this year since March 1, EPA has approved 206 state plans. In fact, 10 of those SIP approvals are reversing federal implementation plans (FIPs) and working with states to approve their plans. The previous Administration has allowed this SIPs to back up waiting approval and also issued a total of 56 FIPs instead of working with states to approve their submitted plans.

Below are groups Pruitt has met with since February which are NGO or public health groups some of which are opposed or apprehensive about EPA actions, but groups we have offered to continue to meet and work with:

- The Nature Conservancy
- Audubon Society
- American Lung Association
- American Public Health Association
- American Academy of Pediatrics
- March of Dimes
- Alliance of Nurses for Healthy Environments
- Physicians for Social Responsibility
- Trust for America's Health
- National Medical Association
- Asthma and Allergy Foundation of America
- National Environmental Health Association

- NYU School of Medicine
- National Association of Environmental Medicine
- National Association of County and City Health Officials
- Health Care Without Harm
- Healthy Air Campaign
- American Lung Association
- East Chicago Community Action Group
- Texas Health and Environment Coalition
- Galveston Bay Foundation

Finally, I mentioned that Administrator Pruitt has done a few "Hill days" where he'll meet with members in their offices on Capitol Hill. In the course of these meetings, he's met with Democrats as well as Republicans. Some of the Democrats include Senator Joe Donnelly and Congressman Pete Visclosky on superfund sites. Pruitt's also regularly meet with governors like Gov. Steve Bullock (Mont.), Gov. Kate Brown (Ore.), Gov. David Ige (Hawaii), Gov. John Hickenlooper (Colo.), and Gov. Dayton (Minn.).

I'll send a separate email on coordinating travel.

Thanks again.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Ex. 6 - Personal Privacy

Internal/Deliberative Process

EPA REGULATORY REFORM UNDER ADMINISTRATOR PRUITT'S LEADERSHIP

*Updated March 16, 2018*

**OVERVIEW:**

- Administrator Pruitt is working to fulfill EPA's core mission of protecting our environment while implementing President Trump's executive orders to reduce unnecessary regulatory burdens, save manufacturing jobs, streamline our permitting processes, and promote American energy independence and rural prosperity.

**REGULATORY STATISTICS UNDER THE PREVIOUS ADMINISTRATION:**

- According to the White House Office of Management and Budget's (OMB) most recent report to Congress on the Benefits and Costs of Federal Regulations, over the last decade, EPA regulations imposed annual costs of **$43.2 to 50.9 billion** – more than the cost of all other federal agencies *combined*.
- That same report showed that, over the last decade, EPA issued more major rules[1] than *any* other federal agency.
- According to EPA's internal database, the Agency issued 20 deregulatory actions from 2009 to 2017.

**REDUCING UNNECESSARY REGULATORY BURDEN UNDER ADMINISTRATOR PRUITT:**

- In accordance with E.O. 13771, for Fiscal Year 2017, EPA finalized at least 2 deregulatory actions for each new regulatory action. Additionally, EPA rules imposed no new net costs. EPA expects to impose no additional net costs in Fiscal Year 2018 as well.
- Under Administrator Pruitt's leadership, EPA has finalized **24 deregulatory actions** that saved the American people more than **$1 billion** in regulatory costs.
- EPA has also initiated work on an additional 42 deregulatory actions.

**OTHER REGULATORY REFORM MEASURES:**

- Issued an Agency-wide directive in October 2017 to end "sue and settle" practices within the Agency, putting an end to regulation by litigation.
- Issued a directive in October 2017 to ensure the independence of EPA's Federal Advisory Committees (FACs) by prohibiting members from serving on a FAC while simultaneously receiving grants from the Agency. In addition, the directive called for more geographic diversity on FACs, more frequent rotation in membership, and greater involvement by state, local, and tribal officials.
- Develop a directive to strengthen transparency and reproducibility for EPA's regulatory science.
- Develop an ANPRM on Increasing Consistency, Reliability, and Transparency in the Rulemaking Process to help inform implementing regulations for how EPA evaluates costs and benefits of rules. The Agency plans to issue this ANPRM in April 2018.
- Improve EPA's internal rulemaking process by updating the *Guidelines for Producing Economic Analysis*, which govern how the Agency conducts benefit-cost analysis and other regulatory impact analyses.
- EPA was the first federal agency to provide updated estimates of the social cost of carbon and methane consistent with E.O. 13783 (e.g, 2016 SCC=$36/metric ton CO2 @3% in 2015; 2017 SCC=$5/metric ton CO2 @3% in 2015).
- Issue permitting decisions in 6 months by 2020.
- Reduce the regulated community reporting and recordkeeping burden by 10 million hours by 2022.

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[1] For which both benefits and costs have been estimated

**KEY DEREGULATORY ACTIONS:**

- ✓ **WOTUS**: EPA estimated the 2015 WOTUS rule had an annualized cost of up to $462.9 million. Per E.O. 13778, EPA and the Army Corps issued a proposed repeal of the rule in June 2017, which could produce $313.9 million in annualized cost-savings. In January 2018, the agencies issued a final rule to change the applicability date of the rule to February 2020 to allow time to reconsider the rule. As a second step, the agencies are developing a revised definition of WOTUS.
- ✓ **Clean Power Plan and Related Actions**: In 2015, EPA estimated that the CPP could cost $5 to 8 billion in 2030 and result in a loss of roughly 34,000 jobs in 2030. The Energy Information Administration (EIA) estimated a loss of about 376,000 jobs under the CPP in 2030. Per E.O. 13783, EPA announced its withdrawal of the Federal Plan/Trading Rule/Framework Amendments under the CPP and its review of the New Source Performance Standards for coal-fired power plants on March 28, 2017. In October 2017, EPA issued a proposed repeal of the CPP saving $33 billion in 2030. In December 2017, the Agency issued an ANPRM to solicit information from the public about a potential future rulemaking to limit greenhouse gas emissions from existing power plants.
- ✓ **Coal Combustion Residuals:** The 2015 CCR rule had an annualized cost of up to $735 million. In March 2018, Administrator Pruitt signed the first of 2 rules that amend the 2015 rule and could produce $100 million in annualized cost-savings.
- ✓ **Risk Management Plan:** The RMP Amendments rule had an annualized cost of $131.8 million. In June 2017, EPA issued a final rule extending the effective date of the rule by 2 years while the Agency reconsiders the rule. In March 2018, EPA sent a draft reconsideration rule to OMB for interagency review.
- ✓ **Vehicle GHG Standards:** In March 2017, EPA and DOT announced their reconsideration of the prior administration's determination and plans to issue a Final Determination by April 1, 2018. In August 2017, EPA also announced its intent to reconsider provisions of the greenhouse gas standards for medium- and heavy-duty vehicles. In November 2017, the Agency issued a proposed rule to repeal emission requirements for glider kits, and provisions for trailers have been stayed by courts.
- ✓ **New Source Review**: In order to improve the NSR program, EPA planned to issue a series of memos on NSR reform. In December 2017, EPA issued guidance about the process of determining whether or not a project at an existing facility triggers NSR requirements (known as the "applicability determination"). In January 2018, EPA issued guidance withdrawing the 1995 "once-in-always-in" policy. In March 2018, EPA issued a memo that provides guidance for accounting changes in emissions from a project under the NSR program when determining whether a project will result in a significant emissions increase.
- ✓ **Methane Oil and Gas Rule**: The 2016 Oil and Gas Methane New Source Performance Standards for new and modified sources would have had an annualized cost of up to $640 million in 2025. Additionally, many of its benefits relied on an overestimated social cost of methane. Per E.O. 13783, EPA announced its intent to reconsider the rule in April 2017. In June 2017, EPA issued a proposed short- and long-term delay of the rule. In March 2018, EPA amended 2 provisions of the rule to address immediate concerns with requirements pertaining to fugitive emissions. On the same day, EPA withdrew the Oil & Gas Control Technique Guidelines (CTG) saving $14 to $16 million in regulatory costs.
- ✓ **Methane Information Collection Request:** The methane ICR for the oil and gas sector had a compliance cost of more than $40 million. In March 2017, EPA rescinded the ICR.
- ✓ **Steam Electric Effluent Limitation Guidelines**: EPA estimated the 2015 Steam ELG rule could have cost $1.2 billion per year in the first 5 years with an annualized cost of $480 million. Additionally, EPA estimated the rule could have reduced total operations and maintenance labor at coal-fired electric plants by the equivalent of 835 full-time employees in 2030. In September 2017, EPA issued a final rule to postpone compliance deadlines by 2 years, providing relief during the Agency's reconsideration, which could produce $36.8 million in annualized cost-savings.

[ PAGE * MERGEFORMAT ]

**Edison Electric Institute**

**Tuesday, 3/13 @ 9:30am**

**Mandarin Oriental Hotel – Grand Ballroom**

**Exact Speaking Time:** 9:45am-10:15am
***Arrive at 9:30am*

**Length:** 15 min.; 10 min. Q&A

**Introduction: Sean Trauschke, OGE**

**Audience: 250 energy executives**

**VIPs: Sean Trauschke, OGE**
**Nicholas Akins, American Electric Power**

**Contact:**

**Media:** Closed

**Opening:** Whoever said you can't have your cake and eat it too, doesn't know what to do with cake.

Why wouldn't you want both pro-energy and pro-environment?

***Bridge***: We can have both pro – look at what we've accomplished. No one does it as good as the U.S…

**Celebrate Progress**

Since 80's – 65% reduction in six criteria pollutants under NAAQs program

- Industry's carbon dioxide emissions down 21 %
- Nitrogen oxides cut by nearly 80% since 1990 and sulfur dioxide down by 86%.
- All while electricity use grew by 36%
- Thanks to technology: clean coal, shale

**Opportunity Knocks**

- Clean Power Plan
- Coal Ash Implementation
- Approve SIPS

Opportunity is knocking and new leadership in the White House and at EPA will answer…

**EPA WILL ANSWER**

- Restore trust, respect
- Abuse of process leads to bad outcomes
- Follow the rule of law…CO2 regulations always stayed, Tailoring struck down
- Stop practice of sue and settle
- Obama 54 FIPS, 10x the number of last three presidents combined

Cooperative Federalism: attitude and leadership; appoint regional officials who view states as partner, not advisories

***Bridge***: *Less than a month on the job and already: WOTUS, methane ICR notice, CAFÉ, CPP coming…*

**Closing:** Baseball…Yogi Berra: "The future

ain't what it used to be."

## Attachment 1 -- API Comments on Specific Regulations
## (top priorities highlighted in yellow)

# Air

| Rule | **Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (NSPS OOOOa rule) (June 3, 2016; 81 Fed. Reg. 35824)** |
|---|---|
| Opportunity for Improvement | Final rulemaking directly regulates GHGs, in the form of a limitation of methane, as a pollutant. Under the Clean Air Act, the addition of GHGs as a regulated pollutant triggers the development of a regulation to address existing sources across the segments. |
| Suggested Improvement | EPA should revisit the final rule process the agency undertook that failed to demonstrate that the source category represents a "significant contribution" to endangering public health and welfare. EPA should also continue to work technical issues through administrative reconsideration process and provide immediate compliance date extensions to avoid costly implementation of rule requirement (e.g., leak monitoring and repair) while EPA revisits rule following publication of April 4th Federal Register (82 FR 16331). |

| Rule | Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (NSPS OOOOa rule) (June 3, 81 Fed. Reg. 35824) --- Alaska specific issues |
|---|---|
| Opportunity for Improvement | This rule would raise specific issues in Alaska:<br><br>(1) The Leak Detection and Repair (LDAR) requirements of the OOOOa rule require periodic inspections with a prescribed technology (Optical Gas Imaging cameras and Method 21 detectors), but those instruments do not operate at temperatures less than-4°F per manufacturers' specifications, so compliance with the rule is not feasible when prevailing weather patterns involve long periods of temperatures below-4°F, such as on the Alaska North Slope.<br><br>(2) The repair timelines do not adequately account for cold climates considerations. Some components used on the Alaskan North Slope are specially rated to-50°F to maintain integrity in the arctic climate. These specialty parts are not typically available for replacement within 30 days in the event of a leak, as the rule requires. Some parts may take up to 36 months to arrive for replacement because of the special climate rating. This delay due to parts unavailability would require shutdowns, and make the costs of the rule outweigh the benefit.<br><br>(3) The State of Alaska already requires piping inspection for leaks monthly. When leaks are detected during these inspections, work orders are generated so they may be investigated and repaired. As similar work is already being done and regulated through a State agency, OOOOa is duplicative and does not achieve significant additional emission reduction in Alaska. The costs imposed by the LDAR requirements far outweigh the benefits of the rule.<br><br>For more information on this topic, please see ConocoPhillips Alaska, Inc.'s OOOOa comment letter dated 12/4/2015 and API's OOOOa Petition for Reconsideration Letter dated 8/2/2016. |
| Suggested Improvement | The operations on the Alaskan North Slope should be categorically exempt from the LDAR requirements. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

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|---|---|
| Rule | Release of Final Control Technique Guidelines for the Oil and Natural Gas Industry (October 27, 81 Fed. Reg. 74798) |
| Opportunity for Improvement | Initiates requirements for states to incorporate controls for existing oil and gas sources within ozone implementation plans where non-attainment is moderate or above (or in OTR). |
| Suggested Improvement | EPA should revisit the stringency of the final CTGs and incorporate cost-effective VOC thresholds. EPA should provide clear flexibility to the states that any application of VOC controls within NOx-limited air sheds should be eliminated. Reducing VOC emissions in areas where the NOx-limited air sheds (where NOx emissions are the primary driver of low-level ozone formation) provides no additional environmental benefit. |

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| Rule | Tribal Lands Federal Implementation Plan (FIP) (40 CFR 49) |
| Opportunity for Improvement | The FIP failed to accommodate synthetic minor sources, requires ESA/NHPA analyses, and is no longer useable for minor source permitting once an area is determined to be non-attainment |
| Suggested Improvement | EPA should modify the FIP to address all issues raised in API's petition including use of the FIP in ozone non-attainment areas and seek streamlined permitting for synthetic minor sources. |

| | |
|---|---|
| Rule | Emissions Standards for Small Remote Incinerators 40 CFR 60 Subpart CCCC and DDDD (effective February 2018) |
| Opportunity for Improvement | Small Remote Incinerator (SRI) emissions standards effective in February 2018 pose a serious concern for remote oil & gas operations in AK which do not have direct access to landfll disposal. EPA standards failed to account for waste stream variability and utilize a "pollutant by pollutant" approach to create a hypothetical incinerator. The rules do not consider net environmental benefits or conflicting regulatory requirements to quickly dispose of trash to minimize wildlife interactions in AK. Standards for newly built incinerators are not technically achievable. |
| Suggested Improvement | EPA should modify the requirements to allow units to meet operational performance standards (e.g., minimum combustion change temperatures, burn time, etc.). |

| | |
|---|---|
| Rule | **Accidental Release Prevention Regulations Under Clean Air Act (RMP)** |
| Opportunity for Improvement | EPA promulgated and issued an updated RMP final rule in January 2017 with little to no coordination with OSHA -- if RMP final rule remains as finalized, there will be significant differences between the RMP and PSM rules placing an increased regulatory compliance burden on regulated sites. RMP final rule has significant provisions that have not been shown will improve safety (inspecting all covered units, 3rd party audits, Safer Technology Alternatives & Analysis). EPA has not demonstrated that the benefits of the revised RMP final rule exceed costs. |
| Suggested Improvement | Initiate new rulemaking allowing the various provisions of concern to be readdressed. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | **Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018** |
|---|---|
| Opportunity for Improvement | EPA published the final rule December 12, 2016 with an effective date of February 10, 2017. Problematic provisions include: (1) Unrealistic assumptions were used in predicting 2017 volumes of cellulosic biofuel, E85, E15, and E0; and (2) Fuels mandates do not reflect current markets, creating potential for economic harm. |
| Suggested Improvement | (1) EPA should utilize its waiver authority in subsequent annual rulemakings to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the mandate does not exceed the E10 blend wall. In order to maintain a market for ethanol-free gasoline, EPA should not set a RFS mandate that would cause the average mandated ethanol content to exceed 9.7 percent of projected gasoline demand.<br>(2) EPA should use realistic projections of E0, E15, E85 demand and cellulosic production when setting the annual RVOs.<br>(3) EPA should work with Congress to reform and ultimately end this unworkable program. |

| Rule | Fuels Regulation Modernization – Streamlining (40 CFR Part 79 & Part 80) |
|---|---|
| Opportunity for Improvement | This action is the first of three phases intended to streamline and modernize EPA's fuels regulations. The purpose of this effort is to update EPA's existing gasoline and diesel regulations to reduce compliance costs for both EPA and industry, improve environmental benefits, and improve compliance assurance with EPA's fuels requirements. In this first phase, EPA will focus on streamlining and modernizing the existing fuels regulatory requirements and designing them in a way to match today's fuel marketplace, undertaking actions such as developing a single common set of provisions and definitions that will apply across all gasoline and diesel programs to reduce complexity, eliminate redundancy, and avoid duplication. Subsequent phases will look at removing variations in in-use fuel requirements and put in place provisions to ensure that health and welfare are protected as new fuels enter the marketplace. |
| Suggested Improvement | EPA should ensure that it reduces the burden of fuels regulations. |

| Rule | **Startup, Shutdown, Malfunction (SSM)** |
|---|---|
| Opportunity for Improvement | EPA began a systemic process of eliminating existing SSM exemptions and affirmative defense provisions from various Clean Air Act regulations and previously-approved SIPs. This potentially exposes every Title V-permitted manufacturing company, which must shut down and start up their equipment to conduct maintenance activities and other planned and unplanned outages, to citizen suits and potential civil penalties that can be costly and time consuming. |
| Suggested Improvement | EPA should reverse SSM SIP calls and defend previous SSM interpretations. |

| Rule | CAA Refinery Consent Decrees |
|---|---|
| Opportunity for Improvement | Most US refineries have agreed to settlement agreements under the Clean Air Act (aka. Consent Decrees), which were signed in the early 2000s. Many of these refineries have met all the requirements of their respective consent decrees, which should now be terminated. EPA has not allocated enough resources towards working with refineries to terminate their consent decrees. |
| Suggested Improvement | EPA should allocate more resources towards working with each refinery in order to terminate their respective consent decrees. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | **NAAQS Review: 2015 Ozone NAAQS** |
|---|---|
| Opportunity for Improvement | A more stringent Ozone NAAQS of 70 ppb was promulgated in 2015 without a sufficient science basis. EPA requested and the Court granted EPA's request to evaluate how the Agency wishes to proceed. EPA will need to report to the court on the status every 90 days. The current NAAQS could result in potential long term non-attainment and over-control of domestic sources attempting to overcome background ozone concentrations. |
| Suggested Improvement | EPA should reconsider the 2015 Ozone NAAQS in a timely fashion. If the EPA does not decide to reconsider 2015 NAAQS, EPA should take steps to expeditiously revoke the 2008 NAAQS. |

| Rule | **NAAQS Implementation (40 CFR Part 51)** |
|---|---|
| Opportunity for Improvement | Implementation rules and associated tools (e.g., robust modeling tools) are not sufficiently flexible and available to implement the NAAQS. Rules should be predictable and provide maximum flexibility to the states and impacted sources. Grandfathering, which is addressed in the NAAQS rule itself, does not provide sufficient transition periods when a NAAQS is revised. The current situation can cause uncertainty and costly delays to both states and businesses. |
| Suggested Improvement | EPA should incorporate the maximum flexibility within the implementation rules. |

| Rule | NAAQS Implementation (40 CFR Parts 50 and 58) |
|---|---|
| Opportunity for Improvement | The compliance monitoring network can be improved with updated guidance to more accurate and economical monitoring practices that will reduce monitor interference, inlet height, altitude, and dry calibration effects currently understating NAAQS compliance. |
| Suggested Improvement | EPA should mandate deployment of new "interference-free" O3 FRMs & FEMs at design value sites, adjustment of current inlet height data to 2 meter outdoor breathing heights above ground level, barometric data adjustment to reflect reduced inhaled gaseous O3 mass in altitude-adapted populations above sea level, and dry calibration/wet operation guidance revision to reduce FRM concentration of O3 and FEM baseline shift effects. Support states in finding the modest resources to substantially improve the monitoring network and thereby limit nonattainment areas to appropriate jurisdictions. |

| Rule | SIP Attainment/Maintenance Demonstration Modeling |
|---|---|
| Opportunity for Improvement | States may conduct brute-force modeling which masks the cost-ineffectiveness of control of a particular source type or category. Facilities may be forced to install costly controls that provide little or no improvement in air quality. |
| Suggested Improvement | EPA should modify implementation rules to require control sensitivity analyses when requested by potentially impacted stakeholders. Sensitivity analyses to be performed in advance of a formal SIP proposal as new implementation rules are proposed. |

| Rule | Treatment of Data Influenced by Exceptional Events (40 CFR 50 [50.14]) |
|---|---|
| Opportunity for Improvement | The Exceptional Event Rule is too narrow and does not provide the relief from events outside the control of air pollution control agencies. Areas could be classified non-attainment due to NAAQS exceedances attributable to background sources. |
| Suggested Improvement | EPA should incorporate policies to include lightning, biological processes and international pollution transport for evaluation as an event. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

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|---|---|
| Rule | NAAQS Review: Standardize Implementation Schedules by finalizing all NAAQS as of 12/31 of the year of completion |
| Opportunity for Improvement | Implementation dates are driven by the finalization of the rules. Calendar years are used for monitoring data evaluation and ultimately when controls must be installed and attainment demonstrations performed. Conflicting schedules for different NAAQS at times result in a need to install controls more quickly than intended. |
| Suggested Improvement | EPA should prevent conflicting schedules from different NAAQS by making all NAAQS final as of 12/31 of the year promulgated. Establish a policy and include this final date in any schedule included in deadline consent decrees. |

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|---|---|
| Rule | NAAQS Short Duration 2010 Standards |
| Opportunity for Improvement | The short-term standards for $SO_2$ and others, such as the current 1-hour standards, can cause permit delays due to sources conducting iterative modeling in order to demonstrate that a contemplated project does not "cause or contribute to the exceedance of a NAAQS." The short duration standards may not provide additional health protection over longer averaging time standards. |
| Suggested Improvement | When conducting NAAQS reviews, EPA should first consider longer term standards, such as an 8 and 24-hour standard, for contaminants for which a 1-hour standard provides no certain quantifiable additional health benefit. |

| | |
|---|---|
| Rule | Functioning and Role of the Clean Air Scientific Advisory Panel (CASAC) in the National Ambient Air Quality Standards (NAAQS) reviews (Section 109 of the Clean Air Act (CAA) enacted on August 7, 1977 (42 U.S.C. § 7409(d)(2) |
| Opportunity for Improvement | CASAC panels are not balanced; for example it can be difficult for industry representatives to be included on the committees. The full role of the CASAC as stipulated in the statutory language is not being fulfilled. This situation could result in NAAQS that are more stringent than required. |
| Suggested Improvement | EPA should select balanced panels. The SAB should ensure CASAC more closely follow the legislative role. |

| | |
|---|---|
| Rule | NAAQS Review: Process and Conclusions in Integrated Science Assessments (ISA) (statutorily known as the Criteria Document) (Section 109 of the Clean Air Act (CAA) enacted on August 7, 1977 (42 U.S.C. § 7409(d)(1) |
| Opportunity for Improvement | To inform a NAAQS review, EPA (ORD) must evaluate whether a given pollutant causes a given health effect and at what dose. EPA's weight of evidence methods for determining likelihood/strength of causal links lack clarity, consistency and transparency. |
| Suggested Improvement | EPA should use consistent criteria for selecting and evaluating studies and use an established weight of the evidence approach to integrate and interpret all available data. EPA should also engage broader scientific community to evaluate current best practices regarding causality and weight of evidence methods. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | NAAQS Review: Process and Conclusions in Risk and Exposure Assessment (REA) |
|---|---|
| Opportunity for Improvement | The REA process needs to provide more rigorous and scientifically sound risk assessments including error analysis. In addition to quantitative uncertainty analysis, EPA should quantitatively account for regulatory health dis-benefits (e.g., health dis-benefits of increased unemployment) should also be evaluated, for balancing against anticipated benefits of tightened NAAQS. |
| Suggested Improvement | EPA should ensure that the REA includes a more rigorous quantitative uncertainty analysis and presentation of a range of plausible risk values. |

| Rule | NAAQS Review: Policy Assessment (PA) |
|---|---|
| Opportunity for Improvement | This "staff paper" is reviewed by CASAC and this approach limits other stakeholder input at this pre-rulemaking stage. |
| Suggested Improvement | EPA should make the administrative change to issue the Policy Assessment as an Advanced Notice of Proposed Rulemaking to gather all stakeholder input on the conclusions of OAQPS |

| Rule | NAAQS Review: Regulatory Impact Analysis (RIA) (Executive Order 12291) |
|---|---|
| Opportunity for Improvement | While the NAAQS are not evaluated on their cost while being developed, a draft RIA is produced when the proposed rule is issued. EPA relies on co-benefits from other pollutants to justify a NAAQS (e.g. PM2.5 co-benefits to justify an ozone NAAQS). These inflated benefits are often used to justify more stringent NAAQS than are necessary. RIA's should also characterize the uncertainty in any estimates. |
| Suggested Improvement | EPA should conduct cost-benefit analyses that do not rely on co-benefits. Analysis should include a robust uncertainty analysis consistent with OMB guidance for developing regulatory impact analyses (RIAs), as required for economically significant rules by Executive Order 13563, Executive Order 12866, and OMB Circular A-4. |

| Rule | NSR Reforms |
|---|---|
| Opportunity for Improvement | There continues to be a need for NSR reforms that simplify and streamline permitting. Uncertainty and overly prescriptive permitting requirements can cause significant delays. EPA is restricting use of the actual-to-projected actual test by issuing policy that is inconsistent with the rule, which in turn discourages both companies and states from using these provisions and states to allow their use. |
| Suggested Improvement | EPA models and procedures need to be updated to improve efficiency and to remove over-conservatism. EPA should finish previous NSR rulemaking efforts to implement improvements in netting and project aggregation evaluations, and incorporate ways to simplify complicated analysis such as BACT/LAER and Routine Maintenance Repair and Replacement Rule (RMRR) exclusion. EPA should issue a policy on use of the actual-to-projected actual test that is consistent with the rule and its intent and clarify that use of the provisions is not a prior approval scheme in the context of minor NSR permitting. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | Significant Impact Level (SIL) used in PSD Permitting (40 CFR 51, 52) |
|---|---|
| Opportunity for Improvement | While Significant Impact Levels (SILs) are useful permitting tools, recent EPA guidance regarding SILs for ozone and PM2.5 recommends unnecessarily conservative levels. Unnecessarily conservative/low SILs result in more permit applicants having to conducta resource intensive and time-consuming cumulative impact analysis. |
| Suggested Improvement | EPA should update its draft SIL guidance: Revise recommended SIL levels using EPA's previously used approximation of "4% of the NAAQS" or, if EPA sets SILs based on ambient monitor uncertainty, determine values usinga 95% confidence interval, not a 50% confidence interval. |

| Rule | Definition of Ambient Air (NSR Policy and Guidance Database) |
|---|---|
| Opportunity for Improvement | EPA analysis assumes it is necessary to evaluate the air quality right outside of any facility boundary. This can be needlessly protective, for example in the case of evaluating modeled compliance with an air quality standard on a railroad right-of-way that bisects a manufacturing facility. There are other circumstances where the terrain or other factors make it highly improbable that people will be present. Additional controls and permit delays can result from this approach |
| Suggested Improvement | EPA should update the definition provided in the NSR Policy and Guidance Database to a reasonable definition that takes into account where people are not likely to be for any extended period of time. |

| Rule | **Petroleum Refinery Sector Risk and Technology Review Rule (December 1, 2015, 80 FR 75178)** |
|---|---|
| Opportunity for Improvement | Final rule published in December 2015 greatly expands controlrequirements at refinery flares, tanks, pressure-relief devices, and cokers. EPA has lagged in resolving outstanding API petition for reconsideration issues, including those that warrant regulatory language changes. |
| Suggested Improvement | EPA should reaffirm relevant features of the final rule without any increases in stringency. Accelerate pace of issue resolution, especially for issues for which compliance deadlines approach and for those requiring regulatory language changes. EPA should work to more fuly develop the record on important aspects of the rule, like the work practice for pressure relief devices and flares. |

| Rule | Equipment Leak Standards (40 CFR 60 & 63) |
|---|---|
| Opportunity for Improvement | EPA has been unwilling to replace Method 21 withoptical gas imaging, camera-based monitoring for the detection of leaks of VOCs and HAPs from equipment such as valves, pumps, and compressors. |
| Suggested Improvement | EPA should initiate rulemaking process to modify all appropriate regulations (e.g., NSPS VV/VVa) to allow use of camera-based equipment leak detection for refineries. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | Once In, Always In Policy (40 CFR 63) |
|---|---|
| Opportunity for Improvement | EPA's policy (1995 Seitz memo) is that facilities that are major sources for HAPs on the first compliance date are required to comply permanently with the MACT standard (i.e. - "once in, always in.") This policy serves as a disincentive to older facilities that might otherwise contemplate additional controls or PTE limits to change permit status from major to area source. |
| Suggested Improvement | EPA should issue new guidance document that revokes this policy and allow sites to switch from major to area source status. |

| Rule | Work Practice Standards (40 CFR 60 & 63 |
|---|---|
| Opportunity for Improvement | Increasingly high hurdle for EPA to establish work practice standards capable of addressing periods of malfunction, especially where alternative remedies are prohibitively costly with negligible environmental benefits. |
| Suggested Improvement | EPA should support work practices as appropriate policy. Evaluate possible statutory change. EPA should solidify as policy that, not only does the agency have authority to establish work practices, but that, in many instances; it's the preferable outcome to advance emission reductions while accommodating the technical limits of strict Clean Air Act rule-setting interpretations. |

| Rule | Reciprocating Internal Combustion Engine (RICE) NESHAP ZZZZ and NSPS JJJJ |
|---|---|
| Opportunity for Improvement | The excessive monitoring, reporting, and record keeping associated with these rules result in costs that outweigh the insignificant environmental benefits of regulated emissions from the affected engines. |
| Suggested Improvement | Revisit rules to identify opportunities for reducing burden associated with rule implementation and exempt portable engines, including emergency generators, from NSPS Subpart JJJJ and from NESHAP Subpart ZZZZ. The monitoring, reporting, and maintenance frequencies within these rules should be reduced. The rules should only be applicable to engine manufacturers based on model year with no recordkeeping requirements at the stationary source. |

| Rule | National Emission Standards for Hazardous Air Pollutants; Site Remediation (May 13, 2016, 81 Fed. Reg. 29821) |
|---|---|
| Opportunity for Improvement | This proposed rule unnecessarily imposes stringent regulatory requirements on remedial activities that EPA itself has admitted are already adequately controlled under CERCLA and RCRA. This proposed rule would remove the existing exemption from the NESHAP standards for site remediation activities performed under CERCLA or a RCRA corrective action. |
| Suggested Improvement | EPA should not finalize rule. |

| Rule | General CEMS and CPMS QA/QC Requirements under MACT and NSPS |
|---|---|
| Opportunity for Improvement | EPA has become overly prescriptive in specifying CEMS and CPMS QA/QC requirements under MACT and NSPS. These requirements are complex, confusing, and costly to comply with, and provide little to no additional environmental protection as compared to adhering to manufacturers specifications. EPA should refrain from more prescriptive requirements and simply specify that sites adhere to manufacturer's specifications for these analyzers |
| Suggested Improvement | EPA should only require CEMS and CPMS analyzers to meet the QA/QC requirements specified by the manufacturer. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | Flare Requirements under NESHAP and NSPS |
|---|---|
| Opportunity for Improvement | EPA has recently promulgated new flare combustion efficiency and emergency flaring requirements in the Refinery Sector Rule (§63.670). In addition, EPA has also approved several Alternative Means of Limitation (AMEL) petitions for multi-point flares. To efficiently allow the utilization of these new standards and approaches in other industry sectors and for sites with multi-point flares, EPA should amend the MACT and NSPS General Provisions to allow others to utilize these new approaches. |
| Suggested Improvement | EPA should consolidate flare requirements by amending the MACT (§63.11) and NSPS (§60.18) General Provisions in a manner consistent with the Refinery Sector Rule and the approved AMELs. |

| Rule | Equipment Leak Standards (40 CFR 60 & 63) – Subparts KKK, OOOO, OOOOa, VV, VVa, HH |
|---|---|
| Opportunity for Improvement | The Leak Detection and Repair regulations are a complex web of regulatory requirements for the monitoring of leaks at natural gas plants. Although well-intended, the current enforcement initiative of LDAR where EPA obtains individual company databases containing thousands upon thousands of monitoring data points and runs diagnostics on the databases to look for data inconsistency, record mishaps, or missing data has resulted in an intense investment of resources and enforcement actions. |
| Suggested Improvement | The LDAR regulations found at Subpart KKK, Quad O, Quad Oa, VV, VVa all should be reviewed and revised to require the on-going conduction of leak monitoring and repairs but to provide more flexibility in repair schedules, monitoring corrections. The focus should be on a well-run monitoring and repair program, and permit upon discovery of minor recordkeeping or monitoring failures, the ability to make corrections and adjustment to the LDAR programs without having violated the regulations. Adding regulatory clarity to this program objective would save the government and industry thousands of man-hours spent on evaluating minor recordkeeping concerns. |

| Rule | Recordkeeping and Reporting (40 CFR 60, 61 and 63) |
|---|---|
| Opportunity for Improvement | Several rules under NSPS and NESHAPS require either quarterly or semi-annual reports for various requirements. These reports are time consuming and do not provide any environmental benefit. |
| Suggested Improvement | Any periodic report should only occur on an annual basis or at the very least, should only be required no more than semi-annually. It is also suggested that the periodic report due dates be staggered throughout the year instead of at the mid or end of year timeframe. |

| Rule | Performance Test (40 CFR 60, 61 and 63) |
|---|---|
| Opportunity for Improvement | Some federal air regulations (e.g., NSPS Subpart Ja) require annual certifications (Relative Accuracy Testing Assessment or RATA) on the continuous emission monitoring devices. The rule also requires quarterly cylinder gas audits (CGAs), which are also a form of analyzer system certification. These annual RATAs are costly and are unnecessary, especially since you are performing a quarterly system assessment. Furthermore, some rules only require CGAs to be done after the initial RATA has been conducted for items required to have CEMS. A re-RATA is required under these regulations only in the event if there is a significant change in the system (e.g. change analyzer system, probe locations, etc.). |
| Suggested Improvement | CGAs should be adequate to ensure that the monitoring systems are operating correctly without the increased costs of the annual RATAs. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

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|---|---|
| Rule | Greenhouse Gas Reporting Program (GHGRP) for these Subparts:<br>Subpart A (General Provisions), Subpart C (Stationary Combustion), Subpart P (Hydrogen Production), Subpart Y (Petroleum Refineries), Subpart MM (Suppliers of Petroleum Products), Subpart NN (Suppliers of Natural Gas and Natural Gas Liquids), Subpart PP (Suppliers of Carbon Dioxide),<br>Subpart RR (Geologic Sequestration of Carbon Dioxide)<br>Subpart W (Petroleum & Natural Gas Systems) |
| Opportunity for Improvement | For each Subpart, API provided unique technical and operational input pertinent to the specific Subpart, to achieve a balance between the burden of data collection and reporting, the need to protect sensitive information and ensure that reporting requirements are placed on the correct reporters, while providing the highest quality data.<br>In past comments, API noted that EPA has other avenues to acquire the needed information- such as commercial data systems DI-Desktop or the EIA's information for onshore production, or the monthly reports to the Bureau of Ocean Energy Management (BOEM) at the well level, for offshore production. |
| Suggested Improvement | 1) Petition to Reconsider has already been filed for some Subparts.<br>2) In the past, API requested that EPA and OMB implement a GHGRP that would provide for less frequent reporting, such as every 2-3 years. This would be based upon an analysis of the burden of ongoing annual reporting and upon the lack of material change in annual emissions in many sectors that are pertinent to the petroleum and natural gas industry.<br>3) EPA should focus on the most significant emission sources instead of focusing on overly-frequent reporting of minor sources. To further streamline the GHGRP it is suggested that the use of company records such as historical samples and engineering calculations should be allowed to avoid expensive and unnecessary calibration and sampling activities. Also GHG reporting should be confined to estimated GHG emissions as opposed to inputs such as feed or product volumes.<br>4) EPA should organize its efforts such that the GHGRP reported data (which pertains to major emitters in 42 industrial sectors nationwide) is used to inform the development of EPA's National Greenhouse Gas Inventory, both for activity data and emission factor data. Better alignment of the GHGRP with the national GHG Inventory ensures better utilization of resources and personnel for both industry and the EPA |

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| Rule | Greenhouse Gas Reporting Program (GHGRP): Leak Detection Methodology Revisions for Petroleum and Natural Gas Systems (Subpart W) |
| Opportunity for Improvement | Finalized three new reporting requirements and added two new monitoring methods for detecting leaks from oil and gas equipment for facilities conducting equipment leak surveys in all of the segments subject to reporting under Subpart W. EPA needs to preserve consistency of measurements and emission estimation methodology among sites, basins and nationwide as well as with NSPS Subpart OOOOa. |
| Suggested Improvement | Petition to Reconsider has been filed on 1/27/2017. This rule is tied to the outcome of NSPS OOOOa. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | EPA Greenhouse Gas Reporting Program |
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| Opportunity for Improvement | Currently, pneumatic devices, including pneumatic controllers, account for over 30 percent of methane emissions in the oil and gas sector in part due to overstated emission rates for pneumatic controller emission factors. These overstated emission factors make pneumatic controllers the largest oil and gas source category of methane emissions and cause the EPA to overstate overall oil and gas sector methane emissions. New research and emission measurement demonstrate that emission factors for intermittent pneumatic devices are much lower than reflected in EPA's current GHG reporting program. |
| Suggested Improvement | Continue work on EPA Greenhouse Gas reporting program to update estimated emission factors for intermittent pneumaticdevices to align with the latest research, such as Allen et al, *Methane Emissions from Process Equipment at Natural Gas Production Sites in the United States: Pneumatic Controllers* (2014) and Thoma et al, *EPA's Assessment of Uinta Basin Oil and Natural Gas Well Pad Pneumatic Controller Emissions* (2017). |

| Rule | Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emission Rate (SER) for GHG Emissions Under the PSD Program |
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| Opportunity for Improvement | EPA's legal authority to establish such *de minimis* SER thresholds under the Clean Air Act is well-established when the administrative and economic burdens associated with permitting are not justified by the trivial emissions reductions from sources that emit below the *de minimis* threshold. Thus, there is no legal barrier to establishing an appropriate SER for GHG emissions. |
| Suggested Improvement | Carbon capture and storage ("CCS") should not be the basis for setting the SER a commercially viable emission control for stationary sources and should not be used to establish a *de minimis* threshold. EPA should consider comments submitted on the proposed SER rule and establish a *de minimis* thresholds significantly above 75,000 tpy. The proposed rule does not fully correct the PSD rule language in order to implement the UARG Supreme Court decision. EPA should consider comments on rule changes needed to fully implement UARG, such as to ensure that BACT for GHGs would not be required if a source only triggers non-attainment NSR but had a significant increase in GHGs. |

| Rule | Electronic Reporting (40 CFR 60 & 63) |
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| Opportunity for Improvement | Rules require facilities to electronically report performance test and performance evaluation data. However, EPA's existing electronic infrastructure is limited, unreliable, and not currently capable of receiving all of the information that facilities are required to report. EPA should drop the electronic reporting requirement until the system is reliable and capable of receiving all of the required information. |
| Suggested Improvement | EPA should clarify, within the rules, that facilities are not required to provide electronic reports until the system is reliable and capable of receiving all of the required information. |

## Attachment 1 -- API Comments on Specific Regulations
## (top priorities highlighted in yellow)

# Water

| Rule | **Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054, (June 29, 2015).** |
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| Opportunity for Improvement | We support the review and ultimate revocation of this rule, as well as EPA's current effort to better define waters of the U.S. in a way that will protect waters, promote the goals of federalism, and provide certainty for businesses.<br><br>Problems with the final 2015 Waters of the U.S. Rule include: 1) the Rule is vague in describing features that are purportedly waters of the U.S. (e.g., "tributary," "adjacent waters," and "significant nexus"), leaving uncertainty which makes informed decisions impossible without case-by-case determinations; 2) the Rule is overly broad, including many land and water features not within the scope of reasonable interpretation under the Clean Water Act (CWA) and exceeding the Agencies' Authority under the Commerce Clause; 3) the Rule relied upon EPA's Connectivity Report, which was still under review by EPA's Science Advisory Board during the entire comment period for the Rule and after the comment period closed. EPA made meaningful changes to the Connectivity Report , depriving the public of an opportunity to comment on or view the final scientific conclusions in the Connectivity Report during the comment period for the Rule and refusing to extend the comment period to allow for public comment on this critical aspect of the Rule; 4) EPA used federal funds to engage in a substantial advocacy campaign for the Proposed Rule to influence Members of Congress, state government officials, and the general public through aggressive social media tactics that generated superficial support for the Rule through Twitter and Thunderclap, soliciting non-specific statements on clean water and treating these "comments" as support for the Proposed Rule; 5) EPA made substantial changes to the Rule between publication of the Proposed Rule and promulgation of the Final Rule without inviting additional comments from the public; and 6) EPA conducted a flawed cost-benefit analysis that dramatically underestimated and omitted certain key costs from the Rule and overestimated certain benefits of the Rule. |
| Suggested Improvement | Subject to review under Executive Order 13778, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule. Seek revocation, receive clear interim guidance, and replacement with a final rule providing more certainty for all stakeholders. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category, 81 Fed. Reg. 124, 41845 (June 28, 2016) – published December 7, 2016. |
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| Opportunity for Improvement | US EPA announced that it will develop standards for produced water from oil and natural gas operations discharged to POTWs – they set a "zero discharge" limit. This rule banned publicly owned treatment works from accepting waters from unconventional oil and natural gas development, relying only on circular logic and regional data. Repealing it would encourage businesses to advance water treatment technologies and infrastructure. Publicly owned treatment works (POTW) permit conditions can still and fulfill the environmental goal of allowing qualifying waters to be discharged at the only after appropriate permits with strict pretreatment discharge standards have been met. From a business perspective, repealing this rule would encourage the development of and adaptation of advanced water treatment technologies (both on-site and within POTWs).<br><br>The rule was problematic in several ways: 1) It offered no environmental benefits and created possible environmental consequences (POTWs are already prohibited from accepting waters outside their permitted discharge limitations but this could cause environmental harm by permanently removing one of the few discharge options by which industry can return water to the hydrologic cycle and deprive POTWs of the economic benefits of accepting discharge related flows within their permit limits merely because of the origin of the water); 2) relied on a definition of unconventional previously used at the federal level only for statistical purposes which conflicts with state definitions (causing unintended consequences); 3) was based on a limited and largely regional data set (ironically from one of the regions where the rule conflicts with the applicable state definitions); 4) relied upon insufficient analysis and procedure (with EPA failing to conduct the statutorily required analysis to support their circular logic); and 5) lacked internal coordination within EPA (EPA handled the issue separately from the larger ongoing study on the use of centralized waste treatment facilities, contrary to the holistic approach recommended in the hydraulic fracturing drinking water study).<br><br>Discharge of produced water from an off-site treatment plant is allowed under the CWA provided the treated water meets applicable water quality standards, and some states have permitted this activity. US EPA has a study underway to evaluate the O&G industry's use of CWTs. US EPA has stated: "While EPA is conducting a study of CWT facilities that accept oil and gas wastewater to determine if revision to the CWT regulations may be appropriate, EPA is not evaluating any approaches that would directly restrict their ability to accept such wastewaters."<br><br>Overall, EPA has not followed the required processes to create standards and there is a concern that since certain regulations have been finalized, they will not "backslide" or make the regulation "less stringent." |
| Suggested Improvement | Candidate for replacement with appropriate pretreatment standards. Should only be repealed if replaced with appropriate pretreatment standards<br><br>Ideas for Revisions: Clarify in the 40 CFR 435 regulations that any type of wastewater is allowed to be sent to POTWs, so long as it can meet the required pretreatment standards developed in a scientific manner. A zero discharge limit is not practical nor justifiable under the Clean Water Act. Also clarify in the CWA that water may be sent to a CWT for treatment and discharge at the surface, so long as the standards for a receiving navigable water are met. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

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| Rule | 2010 Congressionally-directed Study on the Relationship Between Hydraulic Fracturing and Drinking Water. |
| Opportunity for Improvement | A draft Assessment report was released on June 4, 2015 with the key finding, *"the Assessment shows hydraulic fracturing activities have not led to widespread, systemic impacts to drinking water resources."* The SAB Panel provided its recommendation report to the Administrator on August 10, 2016 and a Final assessment was released on December 13 with a revised final conclusion that hydraulic fracturing activities can impact drinking water resources and EPA identifies factors that influence these impacts. |
| Suggested Improvement | Recognition that extensive scientific data does exist to support EPA's original topline conclusion and that no additional scientific work was undertaken by the Agency, following the SAB peer review, leading to the final revised conclusion. |

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| Rule | CWA: 40 CFR Part 435, No Discharge "East of the 98th Meridian" |
| Opportunity for Improvement | The US EPA Oil and Gas Onshore Extraction Point Source Category rule (40 CFR Part 435, Subpart C) regulates the discharge of produced water from oil and gas operations. This regulation prohibits point source discharge of wastewater pollutants into navigable waters from any source associated with production, field exploration, drilling, well completion, or well treatment (i.e., produced water, drilling muds, drill cuttings, and produced sand) east of the 98$^{th}$ meridian. West of the 98th meridian operators can discharge produced water to the navigable waters for beneficial use for agriculture and wildlife propagation (40 CFR Part 435, Subpart E) as long as waste pollutants are removed to acceptable limits for the receiving waters<br><br>For the most part, operators use different technologies to comply with this "no-discharge" regulation, including underground injection and use of pits or ponds for evaporation. Where direct discharge of wastewater is an option for disposal of wastewater, the owner/operator must obtain an NPDES permit from EPA or a delegated state.<br><br>There are two problems with this division. First, the choice of the 98th meridian as a divider is inexplicable. Additionally, produced water should be treated like other types of potential discharges – eligible for discharge when permissible under strict permits with limits set based on water quality, economics, and technology. |
| Suggested Improvement | Clarify in in 40 CFR Part 435 that the discharge of produced water is allowed so long as it can meet the required NPDES standards, protective of navigable receiving waters. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | 40 CFR 60 Subparts CCCC and DDDD and proposed 40 CFR 62 Subpart III, Federal Plan Requirements for CISWI units in Alaska |
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| Opportunity for Improvement | Small remote incinerators (SRIs) in Alaska cannot reliably achieve the emission limits in the 40 CFR 60 Subparts CCCC (emission limits for new units) and DDDD (emission limits for existing units) yet must c omply with them either upon installation of a new unit or by February 2018 for existing units. As such, the SRI units in Alaska are, in the worst case, in danger of having to be shut down. In the best case, add-on controls or waste segregation measures would have to be implemented, thus defeating the utility of the SRIs.<br><br>If the SRIs must be shut down, this could pose substantial problems in remote parts of Alaska– particularly on the North Slope.<br><br>Incineration of food waste is a key element of measures imposed by state and federal agencies to reduce human -wildlife interaction. For example, the Alaska Department of Natural Resources North Slope Area -wide Lease Sale Mitigation Measures states at Mitigation Measure 4h that,<br><br>*"Garbage and domestic combustibles must be incinerated whenever possible or disposed of at an approved site..."*<br><br>and at Mitigation Measure 4k,<br><br>*"Proper disposal of garbage and putrescible waste is essential to minimize attraction of wildlife...The primary method of garbage and putrescible waste [disposal] is prompt, on -site incineration in compliance with state of Alaska air quality regulations."*[1]<br><br>At remote work locations, food waste and other waste must be handled in a manner that does not attract wildlife. If disposal without incineration were relied upon as the waste management method, food wastes will invariably have to be stored to await shipment to a landfill – for some as far as 100 miles away. For remote locations that lack year -round or seasonal access to roads, waste must be flown off-site for disposal. During frequent periods of adverse weather, air shipment of waste may not be possible and the waste could remain stored remotely for several days – increasing the likelihood of attracting wildlife. This poses a threat to both man and animal. Indeed, the very first consideration that a waste management plan required by the Bureau of Land Management for operations in the National Petroleum Reserve – Alaska is this: "The plan shall identify precautions that are to be taken to avoid attracting wildlife to food and garbage."[2]<br><br>Overall, incineration helps to reduce the environmental footprint of remote operations on the North Slope. Without timely destruction of waste, more space would be needed for waste storage, which might translate to addition al wetlands impact. For roadless operations, the need to transport waste by air increases emissions and noise. The additional work, costs, and risks associated with those efforts cannot be justified, especially when they come with their own environmental impacts.<br><br>If the existing emission limits could be met using waste segregation measures, the utility of the SRIs would be largely lost. At remote transient sites such as seismic operations where there are no facilities, waste segregation and hauling are logi stically impractical. Plastics will often have food waste on them and separating and storing them for eventual landfill disposal will |

[1] http://dog.dnr.alaska.gov/Permitting/Documents/Mitigation_Measures_North_Slope.pdf

[2] National Petroleum Reserve – Alaska, Integrated Activity Plan, Record of Decision, February 21, 2013, Best Management Practice A-2

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| | increase the likelihood of attracting animals. Segregation of the sulfur-containing food wastes, such as egg shells, veget ables, meats, and dairy products will present obvious problems and, more importantly, render the use of incineration moot. There would be no point in having an incinerator if these wastes could not be burned. And the key element of those measures put into place to minimize wildlife interaction will have been defeated.<br><br>To date, no add -on control technology has been identified that can provide reliable compliance with the emission limits for the types of waste burned on the North Slope. Industry continues to look for such technology, but making an investment without reasonable assurance of compliance would be unsound. Indeed, EPA has stated, "To the extent that these [small remote incinerators] are located in Alaska, a major difference in these types of units is the inability to operate a wet scrubber in the northern climates and the lack of availability of wastewater handling and treatment utilities."[3] |
| Suggested Improvement | To solve this problem, EPA should accept newly available SRI emissions data and thinkoutside of its "pollutant-by-pollutant" methodology for setting the floor for new and existing SRIs. Alaska industry is preparing a recommended way to do this within the confines of Clean Air Act section 129 and EPA is urged to extend the February 2018 compliance deadline and work cooperatively with industry to set new standards that are actually achievable. |

[3] Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial S olid Waste Incineration Units; Proposed Rule, 75 FR 31951, June 4, 2010.

## Attachment 1 -- API Comments on Specific Regulations
## (top priorities highlighted in yellow)

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| Rule | U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Vessel General Permit for Discharges Incidental to the Normal Operation of a Vessel (VGP) |
| Opportunity for Improvement | This permit is applicable to discharges incidental to the normal operation of a vessel identified in Part 1.2.2 into waters subject to this permit. These waters are "waters ofthe United States" as defined in 40 Code of Federal Regulations (CFR) §122.2 (extending to the outer reach of the 3 mile territorial sea as defined in section 502(8) of the CWA). Much of the confusion surrounding the topic is because of overlapping federallaws and regulations as well as variation in local and state laws. EPA VGP regulations should align with or defer to existing USCG ballast water regulations. |
| Suggested Improvement | Amend VGP to include in 2.2.3.5.2: In cases in which the Coast Guard approves an alternative compliance date to this implementation schedule in accordance with 33 C.F.R. § 151.2036, the schedule for when ballast water treatment management methods become effective, EPA will consider this action to meet BAT requirements. |

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| Rule | Information Collection Effort for Refinery Effluent Limit Guidelines (ELGs) Study– 308 Request |
| Opportunity for Improvement | ISSUE: EPA is in the process of issuing a 308 request to study refinery wastewater technology under a theory that more stringent technology-based effluent limitation guidelines may be warranted to address additional loadings of selenium and other contaminants from increased use of Canadian heavy crude feedstock and the installation of air pollution control equipment and to address dioxins and polynuclear aromatics from particular refinery operations. The outcome of the study could lead to more stringent ELGs.<br>This could lead to additional, technically difficult, costly controls with little to no water quality benefit. |
| Suggested Improvement | EPA should not issue the ICR and/or subsequentlyconclude that existing technology is already sufficient to protect water resources. |

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| Rule | Spill Prevention, Control, and Countermeasure, 40 CFR 112 |
| Opportunity for Improvement | Complexity and ambiguity of the rule invites regulatory misinterpretation and inequitable enforcement; excessive conservatism, particularly for facilities remote from navigable waters; and unreasonable cost burdens. |
| Suggested Improvement | Constrain the rule to economically achievable containment; increase applicability thresholds, including the volume threshold to 10,000 gallons; and expand exemptions/off-ramps. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

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| Rule | Proposed Data Collection Submitted for Public Comment and Recommendations of a Proposed Information Collection Plan on "Health Risks for Using Private Water Wells for Drinking Water, originally published at 81 Federal Register 12902 on and released as an ICR on March 11, 2016 and Submitted an Information Collection Request to OMB on the same topic onJune 22, 2016 (81 Federal Register 40703). |
| Opportunity for Improvement | API's primary concern was the lack of detail in the actual notice regarding the variables which could affect the outcome of the investigation. The Agency should:<br>• Develop specific and appropriate selection criteria to ensure there is no bias from homeowners when choosing a population of private water wells for the investigation.<br>• Indicate how it will consider the geology/hydrogeology where the selected private water wells exist.<br>• Determine how baseline water quality work will be undertaken to understand the aquifer and naturally occurring chemical and biological constituents.<br>• Determine how the implication of positive/negative urine and blood samples be attributed to water rather than other cause.<br>• Develop a response plan should a "contaminant" be found above some health limit and communicate the health limit selected to serve as the baseline.<br>• Determine the anticipated baseline work with respondents to understand individuals' health conditions before the sampling begins.<br>• Follow proper sampling protocols for biological specimens. |
| Suggested Improvement | The proposal should be reworked to address the concerns raised in the comments API submitted. |

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| Rule | 2017 CWA Nationwide Permit 12, SC 17 |
| Opportunity for Improvement | 2017 Special Condition 17: "Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands."<br>In the 2017 language "more than minimal adverse effects" is vague and subject to multiple interpretations making the conditions for Tribal consultation more unclear. |
| Suggested Improvement | Revert back to previous language |

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| Rule | Clean Water Act Section 404(c) |
| Opportunity for Improvement | Clean Water Act 404(c) allows EPA to deny use of a defined area as a disposal site for dredge and fill activities whenever EPA wishes to make such a determination on the basis of impacts to aquatic life, wildlife or water supplies, be it prior to or even after US Army Corp of Engineers (USACE) has issued a permit authorizing those dredge and fill activities. This provision creates regulatory uncertainty, the potential for high restoration and mitigation costs, and loss of access to sites for industrial activities. |
| Suggested Improvement | 1) A regulatory provision constraining EPA's actions under 404(c) to prevent EPA from withdrawing a previously issued USACE dredge and fill permit on this basis; and to allow EPA, in consultation with USACE, to condition but not prohibit USACE issuance of a dredge and fill permit authorizing construction activities at a site.<br>2) Repeal and replace the Clean Water Rule to provide clarity on the definition of Waters of the U. S. applicable to CWA 404(c). |

## Attachment 1 -- API Comments on Specific Regulations
## (top priorities highlighted in yellow)

# Toxics

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| Rule | Addition of Natural Gas Processing (NGP) Facilities to the Toxics Release Inventory (TRI); Community Right-to-Know Toxic Chemical Release Reporting Proposed Rule published at 82 Fed. Reg 1651 on January 6, 2017 with a comment period extensionpublished at 82 Fed. Reg. 12924 on March 8, 2017. |
| Opportunity for Improvement | On October 24, 2012, the Environmental Integrity Project (EIP) filed a petition with the EPA to add upstream activities to TRI reporting. EPA did not formally respond but separately included TRI review of the upstream sector in its 2013 regulatory agenda. On January 3, 2014 EPA published a notice of receipt of this petition and established a formal docket number to be used to view the petition and related documents. On January 7, 2015, EIP filed suit to compel EPA to make a decision on the petition. After almost a year of legal activity, on October 22, 2015, EPA denied in part the original petition, specifically with regards toupstream sector activity, and granted in part regarding the addition of natural gas processing (NGP) facilities to TRI reporting. On January 6, 2017 EPA published the proposed rule. EPA in its determination of applicability of NGP to TRI reporting, underestimated the associated administrative and financial burdens, and overestimated the benefits gainedfrom the proposed rule. |
| Suggested Improvement | This regulation should be withdrawn, as EPA did not provide sufficient cause as to why NGP should be subject to EPCRA Section 313. |

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| Rule | Hydraulic Fracturing Chemicals and Mixtures ANPRM originally published at 79 Fed. Reg. 28664 on May 19, 2014 with a comment period extension published at 79 Fed. Reg. 40703 on July 14, 2014. |
| Opportunity for Improvement | Agency requested information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information under TSCA 8(a) or 8(d) or both. The information that would be collected under a TSCA section 8(a) and/or 8(d) rule for chemicals and mixtures used in hydraulic fracturing is already available to EPA. The Agency has more toxicity and exposure information on the additives used in hydraulic fracturing than it has on many other existing chemicals, and available information is more detailed and extensive than information typically collected under TSCA. |
| Suggested Improvement | The ANPRM should be withdrawn. The Lautenberg Chemical Safety Act (LCSA) creates a risk-based framework for the prioritization and risk evaluation of chemicals, including those used in hydraulic fracturing. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | Lautenberg Chemical Safety Act (LCSA) Section 6 implementation |
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| Opportunity for Improvement | The proposed "framework" rules to implement LCSA have significant flaws that would render them ineffective, including:<br>• Inadequate mechanisms for designating low-priority chemicals;<br>• "Pre-prioritization" EPA activities that would not be transparent;<br>• Lack of adequate clarity on what information sources EPA will use for prioritization and what level of information the Agency will consider sufficient for prioritization;<br>• Unnecessary inflexible focus on all conditions of use in prioritization and risk evaluation;<br>• Reliance on generic guidance in the risk evaluation proposed rule, in lieu of transparency on the specifics of how EPA will conduct risk evaluation; and<br>• Lack of definition of key terms and insufficient clarity on foundational concepts in the risk evaluation proposal.<br>• Casts a wider net on Section 5 PMN reviews that result in unwarranted risk findings and consent orders, contributing to regulatory review delays and increased burden.<br>In order for these important framework rules to be transparent, effective and operate as LCSA intended, the final rules need to correct the flaws noted above and others that commenters on the proposed rules have flagged. |
| Suggested Improvement | The proposals should be reworked to reflect the concerns of API, ACC,AFPM and other affected businesses. |

| Rule | Integrated Risk Information System (IRIS) |
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| Opportunity for Improvement | The Integrated Risk Information System (IRIS) is an EPA program to evaluate the hazards of chemicals and the doses at which those hazards may lead to adverse health effects. EPA's regions and regulatory offices use IRIS values to set regulatory levels in EPA air, water, waste and other programs decisions. The conclusions EPA makes through IRIS ripple through the Agency's regulations, and have led to unnecessarily stringent regulations in some cases. Moreover, IRIS relies on data, information, or methods that are not fully publicly available.<br><br>In the IRIS program, EPA applies "science policy" to calculate toxicity values. The program generates toxicity values that rely on multiple default adjustment factors to address uncertainty in toxicity estimation. EPA's IRIS methods inflate toxicity estimates, which are then used in EPA regulations in many programs. The rationale for choosing the scientific data to be used as the basis for the IRIS numbers is not transparent.<br><br>The IRIS program is inefficient and not based in sound science, using overly conservative assumptions in lieu of weight-of-evidence and other established scientific principles. The Lautenberg Chemical Safety Act (LCSA) establishes a framework for chemical risk evaluation and includes scientific standards in amended TSCA section 26. All data sources the Agency now uses to generate and analyze toxicity information should be consistent with those standards, and IRIS would need to be significantly revamped to meet them. |
| Suggested Improvement | Revamp IRIS program through an independent panel/committee |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | TSCA Premanufacture Notification (PMN) 40 CFR Part 720 |
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| Opportunity for Improvement | Since the June 2016 passage of the Lautenberg Chemical Safety Act (LCSA), EPA has made changes to its policies for review of TSCA section 5 notices for new chemicals (and section 5 exemption notices). The changes were not intended by LCSA, and have brought EPA's new chemical review to a virtual standstill. The situation in the new chemicals program is resulting in significant impacts on the ability of companies to move forward with technology and business plans that involve new chemicals.<br><br>TSCA provides for a 90-day review period for new chemicals review, which EPA largely has adhered to in reviews over the past 40 years. However, of hundreds of PMNs under review since June 2016, only about 10% have passed through the process to commercialization. EPA has initiated regulatory action (so-called "5(e) orders") on over 80% of the chemicals under review, as compared to less than 5% in previous years. EPA has made the program changes unilaterally, without transparency or due process |
| Suggested Improvement | EPA should revert to the in place PMN-program pre-LCSA, and then make any necessary changes through notice and comment rulemaking, as opposed to Agency guidance. |

| Rule | Notification of Chemical Exports—Toxic Substances Control Act (TSCA) Section 12(b) 40 CFR Part 707 Subpart D |
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| Opportunity for Improvement | TSCA export notification requirements have no health or environmental benefit, and are a prime example of an unnecessary bureaucratic program that should be eliminated. The only intended purpose of TSCA export notification is to enable EPA to notify a receiving foreign country that a chemical being exported to the country from the U.S. is subject to a TSCA action. There is no reason to believe that the information EPA provides is of any use to receiving countries, and more importantly, there are no benefits to the U.S. public interest. Furthermore, the current state of communication and technology has rendered EPA's notices to foreign countries obsolete. When TSCA was enacted in 1976, it would have been difficult for foreign governments to know what chemicals EPA regulated under TSCA. Now this information is readily available on the Internet.<br>TSCA section 12(b) does require that exporters notify EPA of exports and that EPA provide receiving countries with notices, but it does not specifically mandate that EPA carry out its statutory obligation in the manner that it currently does. |
| Suggested Improvement | Repeal TSCA export notification requirements. |

## Attachment 1 -- API Comments on Specific Regulations
## (top priorities highlighted in yellow)

# Waste

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| Rule | Financial Responsibility Requirements for Facilities in the Chemical, Petroleum and Electric Power Industries (Jan. 11, 2017, 82 Fed. Reg. 3512) |
| Opportunity for Improvement | Under this Notice of Intent, EPA is indicating that it is proceeding to consider CERCLA financial responsibility for other industries besides mining, including the petroleum industry. CERCLA financial responsibility would be both costly and unnecessary for petroleum facilities. Petroleum manufacturing facilities are already subject to comprehensive federal and state environmental regulations that minimize the risks of future CERCLA liability. In addition, a significant amount of material managed by petroleum refineries is excluded from the definition of hazardous substance and therefore outside the scope of CERCLA 108(b).EPA has not demonstrated the need for CERCLA financial responsibility, particularly since petroleum is exempt from the federal definition of a hazardous substance (and therefore CERCLA liability), and financial responsibility requirements already exist under RCRA addressing similar risks. Finally, most refineries are operated by economically strong companies and are unlikely to require public funding to address releases |
| Suggested Improvement | A final determination by EPA that CERCLA financial assurance for the petroleum sector is not necessary. |

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| Rule | Definition of Solid Waste (Jan. 13, 2015, 80 Fed. Reg. 1694) |
| Opportunity for Improvement | EPA's definition of solid waste (DSW) defines what materials are wastes and, therefore, what materials are potentially subject to stringent regulation under RCRA. EPA has expanded this definition so that it captures many materials that are not being discarded, but instead can be beneficially reused in a production process or as fuels, including many materials from petroleum facilities that can be reused in this manner. This creates unnecessary waste management costs and discourages the beneficial reuse of valuable materials. |
| Suggested Improvement | Reopen the rulemaking to limit the definition and exclude materials that have a beneficial reuse, including materials that can be reinserted into the refinery or safely used as fuels. Note: API and other industry parties filed petitions for review of the 2015 DSW rule, challenging certain provisions of EPA's changes to the definition of solid waste. |

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| Rule | Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry (Jan. 11, 2017, 82 Fed. Reg. 3388) |
| Opportunity for Improvement | Proposed rule establishes important precedent for EPA's imposition of financial responsibilty requirements under CERCLA. The proposed rule imposes a complex process for facilities to calculate the amount of financial responsibility required. EPA's own estimates are that the rule will cost individual mining facilities between $1 and $19 million per year. In imposing this rule, EPA has neither adequately demonstrated the need and has ignored various other regulatory programs that address the same risks, such as state mining reclamation laws. |
| Suggested Improvement | A determination by EPA, after receiving public comment on the proposal, that financial responsibility is not necessary or appropriate for mining facilities. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| Rule | Hazardous Waste Generator Improvements Rule (Nov. 28, 2016, 81 Fed. Reg. 85732) |
|---|---|
| Opportunity for Improvement | This rule made a wide range of changes to the standards for generators of hazardous waste, including several API supported. It also made a significant and unnecessary change by creating a distinction in the requirements between what EPA calls "independent requirements" and "conditions for exemption." The result is that even minor deviations from the generator standards could result in a facility being considered an unpermitted RCRA facility and subject to both disproportionate enforcement and a range of unnecessary requirements, such as RCRA corrective action.<br>The closure requirements for central accumulation areas will restrict the flexibility facilities have to make changes to their operations and impose burdensome notification and post closure requirements more appropriate for permitted treatment storage and disposal facilities (TSDFs) than 90-day storage areas.<br>Many of the new requirements for contingency plans, particularly the requirement to develop a quick reference guide, are not appropriate or necessary for the many petroleum facilities with trained, internal emergency response teams and which are already subject to stringent process safety management, risk management, and emergency response requirements under other regulatory programs. |
| Suggested Improvement | Initiate an action to eliminate the distinction between "independent requirements" and "conditions for exemption."<br>Rescind the closure requirements for central accumulation areas.<br>Eliminate requirement to track containers over the life of site. The focus should solely be on if/when the site closes.<br>Provide an exemption from the quick reference guide for facilities with internal emergency response capabilities.<br><br>Note: API and other industry parties filed a petition for review of this rule challenging the "conditions of exemption" issue identified above. |

| Rule | Identification and Listing of Hazardous Waste (listing of K050) (May 19, 1980, 45 Fed. Reg. 33084) |
|---|---|
| Opportunity for Improvement | In 1980, EPA listed "heat exchanger bundle cleaning sludge from the petroleum refining industry" as a hazardous waste (K050) because of the presence of chromium from the use of corrosion inhibitors in cooling water. Refineries no longer use chromium in corrosion inhibiters yet EPA has never rescinded the listing. Refineries must therefore unnecessarily manage this waste under stringent and expensive hazardous waste rules. |
| Suggested Improvement | EPA rescinds the listing for K050. |

| Rule | Addition of a Subsurface Intrusion Component to the Hazard Ranking System (Jan. 9, 2017, 82 Fed. Reg. 2760) |
|---|---|
| Opportunity for Improvement | This rule will introduce burden and expense, while diverting federal resources with little or no environmental benefit. Most sites with significant vapor intrusion issues are already being addressed under CERCLA or other remedial programs. For other sites, CERCLA is an unnecessary and costly approach to addressing vapor intrusion and these sites are more effectively dealt with through state or even local government programs. |
| Suggested Improvement | Candidate for repeal. |

# Attachment 1 -- API Comments on Specific Regulations
# (top priorities highlighted in yellow)

| | |
|---|---|
| Rule | Emergency Planning and Community Right-to-Know Act (EPCRA) Section 312 Chemical Inventory Requirements (40 CFR Part 370 ) |
| Opportunity for Improvement | Under regulations pursuant to EPCRA section 311, facilities must submit safety data sheets (SDSs) for each hazardous chemical present on-site at or above the reporting thresholds to their State Emergency Response Commission (SERC), Local Emergency Planning Commission (LEPC), and local fire department. The reporting thresholds are lower for "extremely hazardous substances" listed at 40 CFR 355, Appendix B. Facilities may choose to submit a list of the hazardous chemicals grouped into hazard categories instead.<br><br>Although EPCRA section 311 regulations require a one-time submittal, there is another annual inventory report required under EPCRA section 312, which is burdensome and of minimal value. Facilities that are required to submit SDSs or the list of hazardous chemicals under EPCRA Section 311 are required to submit an annual inventory report for the same chemicals (EPCRA Section 312 requirement). This inventory report must be submitted to the SERC, LEPC and local fire department by March 1 of each year.<br><br>Generating the annual inventory reports is labor intensive, as large sites have thousands of SDSs to include. There has never been any regular auditing of these reports by EPA or state agencies, which calls into question their significance. The value of these reports to emergency responders or for any other meaningful purpose to protect the community or environment is questionable. |
| Suggested Improvement | Amend the regulations to require submittal of a one-time inventory of Extremely Hazardous Substances as defined in 40 CFR part 355 Appendix A and Appendix B with ranges (i.e., <10klbs, >10klbs and <100klbs, and so forth). Require resubmittals only if there are significant changes. |

# Other

| | |
|---|---|
| Rule | 1980 National Contingency Plan (NCP) (40 CFR 300), and as amended, 2005 EPA Contaminated Sediment Remediation Guidance for Hazardous Waste Sites / 2002 Principles for Managing Contaminated Sediment Sites |
| Opportunity for Improvement | The EPA is not following risk management principles as outlined in the NCP regulations and EPA guidance manuals. Several regions apply arbitrary criteria and methods to artificially derive below regional background clean-up criteria leading to multiple +$1B remedies. |
| Suggested Improvement | Work with HQ staff to ensure EPA regions follow applicable regulations and guidance. For remedies >$100M, record of decisions should be approved by HQ staff. Increase authority of CSTAG to oversee region actions. Ensure source control / realistic risk and integrative remedies inclusive of capping / natural recovery and dredging are equally applied. |

| | |
|---|---|
| Rule | National Enforcement Initiative (NEI) |
| Opportunity for Improvement | The NEI has been focused on the oil and gas industry in recent years, with an undue impact and evaluation of the industry's continued operations. |
| Suggested Improvement | The NEI should be managed to not focus repeatedly on one industry. Smart effective regulations, along with state enforcement programs, should allow EPA to shift away from NEI altogether. |

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# CLEAN AIR ACT OVERREACH BY THE OBAMA ADMINISTRATION
# SIX ISSUES

**(1) Unauthorized Amendment of the Montreal Protocol & Clean Air Act Refrigerant Management Regulations** undertaken under the President's Climate Action Plan to Draft, Introduce, and Ratify Amendments to the Montreal Protocol to include GHGs & **Unlawful Regulatory Action to "Bend" Clean Air Act Section 608** prohibiting the venting of Stratospheric Ozone Depleting Substances to cover Greenhouse Gases used as refrigerants in industrial, institutional and residential uses. (Not unlike EPA bending CAA authorities like Sections 111(b), 111(d), to achieve climate policy goals in the Clean Power Plan not easily construed as intended under those sections.)

- Led by the U.S. delegation to the Montreal Protocol, the **Kigali HFC Agreement** (named for the capital of Rwanda where talks concluded on September 27, 2016) adopted targets for phase-out of the use of HFCs in refrigerants, fire retardants, and for residential air conditioners.
- On November 18, 2016, EPA published the amendments to the refrigerants management rule to bend CAA Section 608 to include GHGs although Congress intended Title VI of the Act to for the regulation of only stratospheric ozone depleting substances (ODS). 81 Fed. Reg. 82,272.

**(2) Illegal Amendments to Clean Air Act Regional Consistency Requirements for Clean Air Act permitting and application of federal regulations.** EPA is notorious for implementing policy and interpretations of key permit applicability terms like "source," ambient air," "Best Available Control Technology," "contemporaneous" and "adjacent" using guidance memorandum Headquarters issues to EPA's ten regional offices charged with overseeing and/implementing Clean Air Act permitting programs. The Clean Air Act Regional Consistency Requirements is designed to maintain a level playing field to all permit applicants across the 50 states and territories.

- EPA published on August 3, 2016, a regulatory amendment to the Regional Consistency regulations allowing EPA Regions to apply permit and other Clean Air Terms in in different ways in different parts of the country (and without consultation with Headquarters). This action was a response to a loss to a legal challenge to the agency's *different* use of a pivotal permit applicability terms in two different parts of the country in a unanimous 2014 D.C. Circuit decision based on EPA's Regional Consistency Rules in *Nat'l Envtl. Dev. Assoc.'s Clean Air Project v. E.P.A.*, 752 F.3d 999 (D.C. Cir. 2014), 81 Fed. Reg. 51,102.
- A challenge to EPA's August 3, 2016 Amendment of the Regional Consistency Rules was filed on September 30, 2016 in the D.C. Circuit. *Envtl. Dev. Assoc.'s Clean Air Project v. E.P.A,* D.C. Cir. Case No. 16-1344. A proposed briefing schedule is pending.

**(3) Prohibitively Aggressive Preconstruction Permitting Policies** – The Obama Administration has issued other prohibitively aggressive policies, interpretations, and regulatory actions constraining construction of major new sources and major modifications regulated by the Clean Air Act.

- Continued erosion of States' discretion to allow manufacturing permit applicants to "offset" emissions from existing sources for new construction and/or expansion.
- Regressive interpretation of permit applicability terms such as "ambient air" ambient air, "significant impact," and "Best Available Control Technology" for new construction or expansion activities.
- Inappropriate reliance on overly conservative air dispersion models (and increasingly stringent emission significance levels) to prevent new plant construction and expansion of existing plants.
- Regulatory reliance on non-regulatory EPA staff approvals on a case-by-case basis (taking years) to utilize air dispersion models not approved by regulation (the law still requires the use of the 1981-approved air models although a final regulation is undergoing OMB review to update two of these models) when significant technical modeling advancement has occurred.
- Blanket policy directives to roll "Environmental Justice" concerns (without rulemaking, largely because EJ is not authorized by law) into all government agencies' permitting activities and guidelines and to train citizens to use these issues to object to construction and operating permits. (Similar directives and actions rolling climate change into federal actions to construct infrastructure using reviews mandated by the National Environmental Policy Act to slow/disrupt federal infrastructure projects.)

**(3) EPA Actions Interfering with State Discretion to Manage Excess Emissions from Plants during Startup, Shutdown and Malfunction.** EPA has undertaken a series of regulatory actions over the last three (3) years to force States to remove exclusions from their State Implementation Plans (i.e., state regulations) for all National Ambient Air Quality Standards for (1) emissions during startup and shutdown of all process and combustion equipment (including pollution controls such as catalytic oxidizers that emit NOx); (2) emissions during unforeseeable and unpreventable malfunction events; and (3) affirmative defenses and or State Director discretion to waive civil penalties for such emissions in excess of CAA standards for unexpected or unpreventable excess emissions during one of these events.

- The regulatory actions were a response to Sierra Club's Petition to require EPA to remove these State Flexibilities, granted in part by Administrator McCarthy on June 15, 2015 at 80 Fed. Reg. 33,840 The EPA Action disapproving and "calling" the State Implementation Plans, which have included provisions for 46 years allowing "excess emissions" during startup, shutdown (and malfunctions, defined as unforeseeable/unpreventable occurrences) on June 12, 2015. 80 Fed. Reg. 33,840.
- State, industry and other petitions challenging the regulations have been briefed and are awaiting an argument date before the D.C. Circuit Court of Appeals in Walter Coke, Inc. v. EPA, Case 11-1566.
- Although the Fifth Circuit held that EPA could not require Texas to remove these affirmative defense provisions for malfunction emissions, *Luminant Generation Co. LLC v. EPA*, 714 F.3d 841, 845 (5th Cir.2013) that decision is being retried in Walter Coke, Inc. v. EPA, *supra.*
- If States did not remove any and all these state regulatory provisions by October 15, 2016 from their State Clean Air Act regulations, EPA will implement Federal Implementation Plans and remove them.

**(4) Implementation of the 2015 Ozone NAAQS when States have failed to finish implementation of the 1979, 1997, and 2008 Ozone NAAQS.** A mechanism like the one in the Olson Bill would go a long way to addressing concerns with overlapping state regulations to address all these standards for the same ambient pollutant. It also would allow further analysis and development of regulatory mechanisms to deal with the confounding issues of international (china) transport and biogenic emissions background to ozone formation.
(5) Undisciplined use of "sue & settle agreements" unless all stakeholders are participants and consensus can be reached. States and industry agree that exclusion of stakeholders is improper. The Obama Administration has used this mechanism to agree with environmental organizations to schedules and content of standards for hazardous air pollutants and the national ambient air quality standards (particularly SO2 and Ozone).

**(5)- Arbitrary and Unreasonable Promulgation of Standards Applicable to Methane Leaks from New Pipeline Construction and Related Infrastructure Projects**. This May 2016 NSPS undercuts the construction of new infrastructure commenced, modified or reconstructed after Sept. 18, 2015, in turn undermining energy reliability and independence. On **June 3, 2016 and September 29, 2016,** EPA issued two information collection requests to further regulate emissions from existing oil and gas sources by expanding the requirements in "Quad Oa" to all

regulated upstream and midstream facilities, regardless of their age, and to develop standards for new and modified equipment and processes not currently covered under Quad Oa. 81 Fed. Reg. 35,823; 66,962

**(6) Failure to Update Formaldehyde IRIS Assessment**– Human health researchers concur that formaldehyde is not a human carcinogen, but EPA has failed to implement NSF recommendations to update the **Integrated Risk Information System (IRIS)** assessment for the substance. Updating this level will have broad impacts over a number of EPA-administered programs that affect manufacturers, including but not limited to the Clean Air Act.

**To:** Jackson, Ryan[jackson.ryan@epa.gov]
**From:** David Schnare
**Sent:** Tue 6/27/2017 10:46:49 PM
**Subject:** Head's up on two things.

Either you or Scott will be getting a call from either Chairman Smith (House Sci Tech) or his chief of staff (Mark Marin), suggesting that EPA recall and replace **Lisa Matthews, Environmental Protection Agency**, currently serving as the Executive Director of the NSTC Committee on Environment, Natural Resources, and Sustainability at OSTP. This position has management responsibility over the entire committee and can stop action on the rewrite of the National Climate Assessment, a quiet effort now under way to impose the IPCC view of the science on the U.S. government. Replacing Matthews will allow development of a "red team" at OSTP to reexamine the basis for the assessment. EPA will be at arms length on this redux of the science.
Second item. Scott delivered remarks to a conservative policy group last week. Attendees noted that he made "remarks" about the ineptitude of "the bureaucracy" and regaled them with the speed with which the retraction of the ICR on methane was done. Scott and others laughed when I told him that it would take slightly over a week to get the first registered letter out and it would be completed within a couple of weeks. Apparently Scott is telling people that through his direction, the letters went out the next day. They did not and some people at the meeting knew they had not. If he keeps telling this story, eventually someone in the Agency is going to hear about it and contact the press, harming Scott's credibility.

Scott never asked me why it would take over a week to get the process started and at that point I didn't impose on him with the facts. I never thought he would boast about all this, but now that he has put the incident into his stump speech, he needs to learn about how this kind of thing must be done and why it actually took the amount of time I told him it would take.

In one long sentence, this is what had to (and did) happen. OAR was directed to send out the letters as registered letters to each party who got them before; OAR management had to find a contract under which to perform that task and a project manager to handle it; the project manager had to draft a scope of work; that had to be transmitted to the contracts office who had to validate that the contract could perform that scope of work under the scope of the contract; the contract officer then had to prepare a task order which they had to send to the contractor; the contractor had to prepare a work plan that listed who would do the work, their seniority and their hourly rates, along with a total cost, to be transmitted back to the contract officer; the contract officer had to send the work plan to the project officer to ensure the plan would do what was wanted and that the right mix of contract staff was assigned; the project officer then had to approve the work plan, send it back to the contract officer who then had to send a formal approval letter to the contractor. Only then could the contractor begin. In the mean time, the project officer had to draft a formal withdrawal letter which had to be ok'd by OGC. At that point, the contractor had to clean up the mailing list which was flawed in the first place (many returned original letters) and the contractor staff had to hand write the registration labels for the several thousands of letters. The first letter went out 8 days after Scott directed the work be done and the final letter went out just over two weeks thereafter.

d.

--
David W. Schnare, Esq. Ph.D.

Message

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]
**Sent:** 12/6/2017 7:22:43 PM
**To:** Hilary Moffett [moffetth@api.org]
**Subject:** RE: Meeting Request for Bill Wehrum

You're welcome.

Shanita Loving
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406 B, WJC-North
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone: 202-564-4728

**From:** Hilary Moffett [mailto:moffetth@api.org]
**Sent:** Wednesday, December 06, 2017 2:11 PM
**To:** Loving, Shanita <Loving.Shanita@epa.gov>
**Subject:** RE: Meeting Request for Bill Wehrum

Great—thanks again for your help.

**From:** Loving, Shanita [mailto:Loving.Shanita@epa.gov]
**Sent:** Wednesday, December 06, 2017 2:05 PM
**To:** Hilary Moffett
**Subject:** RE: Meeting Request for Bill Wehrum

Thank you Hilary. There is nothing else we will need from you. Please use call-in information below on December 13th .

**Dial in Number:** Personal Phone / Ex. 6
**Participant Code:**

Thanks.

Shanita Loving
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406 B, WJC-North
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone: 202-564-4728

**From:** Hilary Moffett [mailto:moffetth@api.org]
**Sent:** Tuesday, December 05, 2017 3:15 PM
**To:** Loving, Shanita <Loving.Shanita@epa.gov>
**Subject:** RE: Meeting Request for Bill Wehrum

Hi Shanita,

The primary topics we plan to discuss are: methane, ozone, and RFS.

The attendees, at this point, are:

Hilary Moffett, API
Stephen Higley, Marathon Petroleum
Dale Thanjan, Phillips 66
Kate Fay, Noble
Marni Funk, Shell
David van Hoogstraten, BP
Matt Todd, API
Puneet Verma, Chevron
Brandon Kirkham
Khary Cauthen, API
Robert Nolan, Exxon Mobil
Kevin Avery, ConocoPhilips
Howard Feldman, API
John Wagner, API
Sara Glenn, Shell
Rebecca Rosen, Devon

Jill Cooper, Anadarko, would like to call in from Colorado.

We will not be using any handouts. Please let me know if you need additional information from me.

Thanks,
Hilary

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**From:** Loving, Shanita [mailto:Loving.Shanita@epa.gov]
**Sent:** Monday, December 04, 2017 1:38 PM
**To:** Hilary Moffett
**Subject:** RE: Meeting Request for Bill Wehrum
**Importance:** High

Hi Hilary,

Would you please provide a list of attendees (names/titles) that will be joining this meeting in person and those who plan to participate via phone.

Thank you,

Shanita Loving
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406 B, WJC-North
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone: 202-564-4728

**From:** Hilary Moffett [mailto:moffetth@api.org]
**Sent:** Monday, December 04, 2017 11:27 AM

**To:** Loving, Shanita <Loving.Shanita@epa.gov>
**Subject:** RE: Meeting Request for Bill Wehrum

Hi Shanita,

Thanks for your email. Is it possible to have a phone in the room? We have some folks from afar that would like to call in. I can use my conference number and those that dial in will remain on mute. I'd just like for them to have the chance to listen.

Thanks,
Hilary

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**From:** Loving, Shanita [mailto:Loving.Shanita@epa.gov]
**Sent:** Wednesday, November 29, 2017 11:16 AM
**To:** Hilary Moffett
**Subject:** RE: Meeting Request for Bill Wehrum

You are confirmed for a 30 minute meeting on Wednesday, December 13th 2:00 – 2:30 pm ET with Bill Wehrum.
Directions and procedures to 1200 Pennsylvania Avenue NW:

> Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn right. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, North Entrance.
>
> Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left – that is the North Lobby of the William Jefferson Clinton building.
>
> Security Procedures: A government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared and arrive at the meeting room on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. Let the guards know that you were instructed to call 202-564-7404 for a security escort.

Please send me a list of participants in advance of the meeting and feel free to contact me should you need any additional information.

Shanita Loving
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406 B, WJC-North
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone: 202-564-4728

**From:** Hilary Moffett [mailto:moffetth@api.org]
**Sent:** Tuesday, November 28, 2017 5:05 PM
**To:** Loving, Shanita <Loving.Shanita@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Meeting Request for Bill Wehrum

Hi Shanita,

Thanks again for sending these times. We'll take Dec 13th from 2-230. I will send you an agenda and a list of attendees (and their company) next week. Will that provide enough lead time?

Regards,
Hilary

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**From:** Loving, Shanita [mailto:Loving.Shanita@epa.gov]
**Sent:** Tuesday, November 28, 2017 3:30 PM
**To:** Hilary Moffett
**Cc:** Atkinson, Emily
**Subject:** FW: Meeting Request for Bill Wehrum
**Importance:** High

Hi Hilary,

Please see a list of dates/times slots that Bill will be available for a 30 minute meeting. Let us know which date and time will work best on your end.

**December 13th**
2:00 – 3:00 pm

**December 14th**
1:00 – 2:00 pm
4:00 – 5:00 pm

Thanks!

Shanita Loving
Staff Assistant
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406 B, WJC-North
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone: 202-564-4728

---

**From:** Atkinson, Emily
**Sent:** Monday, November 27, 2017 11:43 AM
**To:** Hilary Moffett <moffetth@api.org>
**Cc:** Loving, Shanita <Loving.Shanita@epa.gov>
**Subject:** RE: Meeting Request for Bill Wehrum

Hi Hilary,

Thank you for the meeting request – we will review it and get back to you shortly.

Emily

Emily Atkinson
Management Analyst/Office Manager

Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5412B, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

**From:** Hilary Moffett [mailto:moffetth@api.org]
**Sent:** Monday, November 27, 2017 9:29 AM
**To:** Loving, Shanita <Loving.Shanita@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Meeting Request for Bill Wehrum

Good Morning Shanita,

I hope this email finds you well. A group of people from API and our member companies wanted to schedule a meeting with Assistant Administrator Wehrum to discuss priorities. We have been working closely with Mandy and the team both in DC and in North Carolina on a number of air issues, and believe a meeting to touch bases on those issues would be mutually beneficial as Mr. Wehrum continues to dig into his new role. I understand that he is incredibly busy, and only ask for about 30 minutes of his time in the coming weeks.

Thanks for your consideration.

Regards,
Hilary

Hilary Moffett
Director, Federal Relations
American Petroleum Institute
202-682-8040 (desk)
612-710-8696 (cell)
MoffettH@api.org

**From:** Cason, James
**To:** Rees, Gareth
**Subject:** Fwd: Meeting Request
**Date:** Sunday, February 19, 2017 1:26:24 PM
**Attachments:** Energy Regulatory Priorities.pdf

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Have you worked out a meeting time for API? Didn't want it to fall through the cracks.

---------- Forwarded message ----------
From: Holly Hopkins <hopkinsh@api.org>
Date: Fri, Feb 3, 2017 at 11:44 AM
Subject: Meeting Request
To: Jim Cason <James_Cason@ios.doi.gov>

Jim,

In December, API made a request to meet with the DOI Transition/Landing team to talk about issues and opportunities for the Trump Administration. This request was never fulfilled. We would like to again make the request to meet with you and other appropriate DOI political staff to discuss these issues. Attached outlines our top priorities. Please let me know what works for you and do not hesitate to call if you have questions. Have a great weekend.

Thanks,

Holly A. Hopkins

Sr. Policy Advisor, Upstream

American Petroleum Institute

1220 L Street, NW

Washington, DC 20005

202-682-8439 Tel

hopkinsh@api.org <mailto:hopkinsh@api.org>

<http://www.api.org/>

**ENERGY POLICY PRIORITIES**

Executive agencies should implement policies that:

1. Promote access to domestic oil and gas resources;
2. Ensure the development of energy infrastructure;
3. Ensure streamlined, timely planning, permitting and project review;

Executive agencies should ensure that regulations:

1. Actually serve the regulatory purpose ;
2. Are cost-effective (costs do not outweigh the benefits);
3. Feasible;
4. Are well-defined and predictable;
5. Are scientifically supported;
6. Are consistent with statute;
7. Are not arbitrary;
8. Promote streamlined permitting;
9. Promote, rather than stifle, innovation;
10. Defer to industry standards and best practices where applicable;
11. Encourage investment in U.S. projects.

Executive agencies should defer to state agencies to oversee the regulation of drilling, completion and production of oil and natural gas. State agencies have a long history of regulating these activities, and they are best able to tailor the regulations to the unique geology, topography, hydrology and general social conditions that exist within the state.

Executive agencies should review the abuse of the Endangered Species Act (ESA) to ensure that it is not arbitrarily used to restrict economic opportunities. State governments have successfully worked with private industry to preserve species and habitat. Executive agencies should work with and defer to state governments as it relates to the ESA.

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| | **Priorities for Immediate Action** | | | |
| 1. | **BLM Waste Prevention, Production Subject to Royalties, and Resource Conservation** (Nov. 18, 2016, 81 Fed. Reg. 83008) | **BLM** | Rulemaking goes above and beyond BLM regulatory authority to propose air quality-related requirements unrelated to that authority, and impermissibly redefines long-standing principles of resource conservation that threaten to undermine existing lease rights and orderly development of oil and gas on BLM-managed lands. Efforts will be undertaken to repeal the rule. | Priority target for repeal. |
| 2. | **Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources** (NSPS OOOOa rule) (June 3, 81 Fed. Reg. 35824) | **EPA** | Final rulemaking directly regulates "methane" as a pollutant. Under the Clean Air Act, this triggers the development of a regulation to address *existing* sources across the segments. Regulation of existing sources should be avoided. | Judicial review ongoing. Potential revisiting of process EPA undertook that failed to demonstrate that the source category represents a "significant contribution" to endangering public health and welfare. Continue to work technical issues through administrative reconsideration process. |
| 3. | **BOEM Air Quality Control, Reporting and Compliance Rule**<br><br><u>Final Rule has not been published yet.</u> | **BOEM** | Proposed rule was issued prematurely in advance of the completion of ongoing BOEM air quality studies. BOEM has not demonstrated to date that OCS sources significantly affect onshore air quality as required by OCSLA. BOEM needs to finish its ongoing air quality studies to | If final rule published before Obama Administration leaves office it should be repealed or withdrawn prior to implementation. |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| | | | determine appropriate level of regulation.<br>The costs of the rule have been significantly underestimated.<br>The proposed rule established an evaluation process that would increase the need for operators to perform costly stack testing and air quality modelling and could require retrofit of existing infrastructure or installation of new equipment which may not always be technically or economically. The proposed definition of "facility" was unworkable in that it lumped proximate sources together and treated them as one source. The rule also attempted to regulate emissions of mobile support craft (service boats) which is outside BOEM jurisdiction. | If final rule not published, the new administration should complete air quality studies prior to any further action. |
| 4. | **ONRR Amendments to Civil Penalty Regulations** (August 1, 81 Fed. Reg. 50306) | **Office of Natural Resources Revenue (ONRR)** | In a variety of ways, this rule improperly and significantly increases liability on federal oil and gas lessees for minor and inadvertent reporting and recordkeeping errors. These changes not only are highly problematic for industry but also conflict with the will of Congress as expressed through the text and structure of the federal oil and gas royalty law. The desired outcome for this rule would be repeal and return to the status quo prior to its issuance. | The new administration can conduct a rulemaking that would repeal the rule. |
| 5. | **ONRR Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform** (July 1, 2016 81 Fed. Reg. | **ONRR** | This rule creates uncertainty and imposes unsupported limits regarding the valuation of oil and gas production | The new administration can conduct a rulemaking |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
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| | 43338) | | for royalty purposes. Most significantly, it allows ONRR to second-guess payors' calculation of value and deductions. It also establishes inappropriate limits on deductions, including the elimination of a significant deduction for subsea transportation of production. The rule is positive in that it allows lessors to elect a simplified "index price" valuation in certain cases, but the implementation of that option is highly flawed. The desired outcome for this rule would be an improved "index price" option and elimination of other aspects of the rule. | that would repeal or amend the rule. |
| 6. | **BOEM/BSEE Oil and Gas and Sulfur Operations on the Outer Continental Shelf-Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf** (July 15, 2016 81 Fed. Reg. 46477) | **BSEE-BOEM** | Overall these rules favor prescriptive requirement when performance-based requirements would better serve. Chief among these, the rule requires a standby relief rig for exploration drilling projects and does not consider other barrier technologies. The rules impose a requirement for a redundant planning document – the Integrated Operations Plan or IOP. | New Administration can repropose rule, or can pursue through new rulemaking the removal of the standby rig, IOP, cuttings discharge, and other problematic sections. |
| 7. | **Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category**, 81 Fed. Reg. 124, 41845 (June 28, 2016) – published December 7, 2016. | **EPA** | The rule was problematic in several ways: 1) It offered no environmental benefits and possible environmental and consequences (POTWs are already prohibited from accepting waters outside their permitted discharge limitations but this would it would cause environmental harm by permanently removing one of the few discharge options by which industry can return | Candidate for repeal. |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | water to the hydrologic cycle and deprive POTWs of the economic benefits of accepting discharge related flows within their permit limits merely because of the origin of the water); 2) relies on a definition of unconventional previously used at the federal level only for statistical purposes which conflicts with state definitions (causing unintended consequences); 3) was based on a limited and largely regional data set (ironically from one of the regions where the rule conflicts with the applicable state definitions); 4) relied upon insufficient analysis and procedure (with EPA failing to conduct the statutorily required analysis to support their circular logic); and 5) lacked internal coordination within EPA (EPA handled the issue separately from the larger ongoing study on the use of centralized waste treatment facilities, contrary to the holistic approach recommended in the hydraulic fracturing drinking water study). | |
| 8. | **BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; <u>Site Security</u>** | **BLM** | Even with a new provision in the final rule to allow grandfathering of some very low production wells, this rule imposes significant costs on existing production, with the likelihood of expanding many site footprints, and with negligible federal revenue benefits. Retroactive application of the Proposed Rule will have profound effects both | Candidate for repeal. Alternatively, New Administration could repropose rule, providing for grandfathering existing facilities, or by setting higher production threshold |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| | | | legally and practically for thousands of existing well sites currently in operation. Retroactive application of the Proposed Rule may result in termination of many existing approvals potentially leading to premature cessation of existing production and raising breach of contract, due process, and takings issues. | for compliance. |
| 9. | **BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil** | **BLM** | The prescriptive nature of the proposal's requirements, which repeats the error of the original Onshore Order No. 4 and will preclude implementation of newly developed measurement practices and technologies as they become available; the removal of critical standard-setting and adjudicatory functions from the notice-and comment rulemaking process, placing them instead in the hands of a BLM-appointed "Production Measurement Team" ("PMT") or leaving standard-setting to future BLM discretion. Timelines that ignore the practical difficulties – both for industry and the agency –associated with compliance. Removal of the enforcement regime from the regulations and placing it in as-yet unseen "guidance documents". | Candidate for repeal. Alternatively, New Administration could repropose rule, providing for grandfathering existing wells, extending compliance timeline, shifting to a performance-standard rather than prescriptive approach, or by setting higher production threshold for compliance. |
| 10. | **BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas** | **BLM** | BLM's misapprehension of current industry standards, resulting in a proposal that requires adherence to a set of prescriptive standards that does | Candidate for repeal. Alternatively, New Administration could repropose rule, |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| | | | not accommodate current or future practices and technologies. BLM's gross underestimation of the costs associated with implementation of the Proposed Rule, and imposition of compliance timelines that will be impossible to meet. Removal of critical standard-setting and adjudicatory functions from the notice-and-comment rulemaking process, placing them instead in the hands of a BLM–appointed "Production Measurement Team" ("PMT") or leaving standard-setting to future BLM discretion. | providing for grandfathering existing wells, extending compliance timeline, shifting to a performance-standard rather than prescriptive approach, or by setting higher production threshold for compliance. |
| 11. | **Information Collection Effort for Oil and Gas Facilities** (Methane and VOCs for existing sources) (September 29, 81 Fed. Reg. 66962) | **EPA** | EPA sent extensive information collection request to be conducted in two parts. Significant burden associated with ICR to complete within deadlines (60 days for Part 1 and 180 days for Part 2). | Continue to work with EPA to secure additional time for members to respond, secure clarifications as needed, and work with agency on data analysis and use. |
| 12. | **BLM Resource Management Planning** (February 25, 2016, 81 Fed. Reg. 9674) | **BLM** | Planning 2.0—as a whole—changes the BLM's resource management planning process, and introduces significant uncertainty into the process by numerous provisions that create ambiguous standards or otherwise expand agency discretion. A piecemeal approach to Planning 2.0 that precludes the public from being able to review, analyze, and comment on all the various components of the agency's new | Candidate for repeal. |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| | | | planning approach that will modify or replace BLM's current land use planning practices. A process redesigned by the Proposed Planning Rule would likely disfavor multiple use interests, including the development of oil and natural gas resources on public lands, by potentially subjecting each step in the process to a new round of objections by parties committed to opposition of resource development. | |
| 13. | **Final guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews**, White House, Council on Environmental Quality, signed August 1, 2016. | **CEQ** | Greatly expands NEPA expanding GHG consideration for reviews of new and modified operations, and review could include very detached upstream and downstream GHG impacts. This goes well beyond the intended scope of NEPA, could be used as a tool to deny oil and gas development opportunities, and has been used as such a tool by industry opponents. | Rescission |
| 14. | **BOEM Financial Assurance NTL No. 2016-N01**, 81 Fed. Reg. 46599 (July 18, 2016). | **BOEM** | BOEM's financial assurance NTL introduced a new methodology to evaluate the financial strength of a company that is flawed. The new policy also severely limits the ability of companies to self-insure to cover decommissioning liabilities and the agency has essentially placed the overwhelming burden of fixing a perceived problem on the industry. These problems are exacerbated by potentially flawed decommissioning | Publish a revised NTL with a new implementation plan. Consider need for rulemaking as appropriate. |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | cost data being used to calculate liabilities.<br>BOEM has recognized that there are problems with the NTL and is working to correct them. However, the implementation schedule currently in place will not allow sufficient time to adequately address all the issues.<br><br>BOEM must establish a reasonable timeline for implementation that will allow the flaws to be corrected. | |
| 15. | **Presidential Memorandum "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment"**, the Presidential proclamation that set "no net loss" as a shorthand objective, and states that environmental goals (not simply positive environmental effects) are to be a criterion of future economic and national security actions. November 3, 2015 (80 FR 68743). | **White House** | Introduces criterion for federal permitting and project approval decisions that will be subject to widely varying interpretations, and that in many cases will countermand the direction of statute. | Seek revocation. |
| 16. | **FWS Revisions to the U.S. Fish and Wildlife Service Mitigation Policy (broad policy)**, originally published 81 Fed. Reg. 12,380 (Mar. 8, 2016). Final Policy published November 21, 2016 at 81 Fed. Reg. 83440. FWS-HQ-ES-2015-0126. | **FWS-NMFS** | The Policy applies to both listed and unlisted species, even though states are charged with the management of unlisted species.<br>The Policy establishes a uniform mitigation goal that applies to all actions without distinguishing statutory limits and therefore may be applied inconsistently with statutory authority.<br>The Policy's preference for advance mitigation may delay project | Seek revocation. |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | authorizations if mitigation is unavailable at the time of impacts.<br>The Policy does not clearly address how to reconcile its mitigation goal and elements with mitigation requirements of other agencies, such as those associated with permits under section 404 of the Clean Water Act.<br>The Policy's direction to avoid all "high-value" habitats may cause the FWS or other federal agencies to "veto" projects. Moreover, because the Policy does not clearly define what habitats are considered high value, the Policy may cause agencies to conservatively avoid more habitat than necessary. | |
| 17. | **FWS Draft Endangered Species Act Compensatory Mitigation Policy (specific to ESA impacts)**, originally published at 81 Fed. Reg. 61.032 (September 2, 2016). FWS-HQ-ES-2015-0165. | **FWS** | The Draft Compensatory Mitigation Policy violates the ESA. The Service's decision to significantly expand the list of threatened and endangered species does not justify this expansive rewriting of the Service's mitigation framework.<br>The Draft Policy's "no net loss/net gain" requirements, additionality requirements and mitigation ratios, advance mitigation requirements, and definition of "at-risk species" are inconsistent with and violate a number of federal environmental and wildlife statutes and policies. The Draft Policy is impermissible because it cannot be credibly construed as a mere policy statement or simply guidance to Service personnel. It is a proposed rule that, if | Seek revocation. |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | finalized, would fundamentally change the Service's compensatory mitigation requirements, create substantive new obligations, and expand the jurisdiction of FWS through interpretations of numerous statutes. | |
| 18. | **NOAA/NMFS Acoustic Criteria Technical Guidance**, 81 Fed. Reg. 51694 (August 4, 2016). | **NMFS** | Guidance is difficult and costly to implement and unable to produce realistic metrics of impact and mitigation threshold ranges or exclusion zones.<br>Significant changes to the thresholds applicable to low frequency (LF) cetaceans that is not consistent with the best available science.<br>Many other technical problems that need to be addressed. | Retract and revise Guidance. |
| 19. | **2010 Congressionally-directed Study on the Relationship Between Hydraulic Fracturing and Drinking Water.** | **EPA** | A draft Assessment report was released on June 4, 2015 with the key finding, "*the Assessment shows hydraulic fracturing activities have not led to widespread, systemic impacts to drinking water resources.*" The SAB Panel provided its recommendation report to the Administrator on August 10, 2016 and a Final assessment was released on December 13 with a revised final conclusion that hydraulic fracturing activities can impact drinking water resources and EPA identifies factors that influence these impacts. | Recognition that extensive scientific data does exist to support EPA's original topline conclusion and that no additional scientific work was undertaken by the Agency, following the SAB peer review, leading to the final revised conclusion. |
| 20. | **BSEE Oil and Gas and Sulfur Operations in the Outer Continental Shelf—** | **BSEE** | There are still provisions of the final WCR that are problematic for industry. | New Administration can revise rule or issue |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | **Blowout Preventer Systems and Well Control**; Final Rule 81 Fed. Reg. 25888 (April 29, 2016) | | We look forward to working with the new Administration to address those provisions of the rule that are still unworkable. Whether through interpretations, clarifications or revisions to the rule. | guidance to ensure consistent and workable compliance. |
| 21. | **Clean Water Rule: Definition of "Waters of the United States**," 80 Fed. Reg. 37,054, (June 29, 2015). | **EPA and the U.S. Army Corps of Engineers** | Problems with the final Waters of the U.S. Rule include: 1) the Rule is vague in describing features that are purportedly waters of the U.S. (e.g., "tributary," "adjacent waters," and "significant nexus"), leaving uncertainty which makes informed decisions impossible without case-by-case determinations; 2) the Rule is overly broad, including many land and water features not within the scope of reasonable interpretation under the Clean Water Act (CWA) and exceeding the Agencies' Authority under the Commerce Clause; 3) the Rule relied upon EPA's Connectivity Report, which was still under review by EPA's Science Advisory period during the entire comment period for the Rule and after the comment period closed, EPA made meaningful changes to the Connectivity Report , depriving the public of an opportunity to comment on or view the final scientific conclusions in the Connectivity Report during the comment period for the Rule and refusing to extend the comment period to allow for public comment period on this critical aspect of the Rule; 5) EPA | Seek revocation. |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | used federal funds to engage in a substantial advocacy campaign for the Proposed Rule to influence Members of Congress, state government officials, and the general public through aggressive social media tactics that generated superficial support for the Rule through Twitter and Thunderclap, soliciting non-specific statements on clean water and treating these "comments" as support for the Proposed Rule; 6) EPA made substantial changes to the Rule between publication of the Proposed Rule and promulgation of the Final Rule without inviting additional comments from the public; and 7) EPA conducted a flawed cost-benefit analysis that dramatically underestimated and omitted certain key costs from the Rule and overestimated certain benefits of the Rule. | |
| 22. | **DOI/BOEM 2017-2022 Proposed Final 5-Year OCS Leasing Program**, 81 Fed. Reg. 84612 (November 23, 2016).<br><br>**Presidential Withdrawal of Areas in Alaska and Atlantic pursuant to section 12(a) of the OCSLA**. Announced on December 20, 2016. | **BOEM and White House** | No lease sales scheduled in Alaska or Atlantic OCS.<br>Very questionable rationale for not including; record actually supports inclusion.<br>Need to preserve 2017-2022 Program while we work to establish a new program that would include additional areas for leasing.<br>New Administration should confirm that 600,000 plus comments supportive of an expansive program were submitted versus a great deal less in opposition. | Administration – Begin development of new 5-year Program. Need to determine how far back in process we would need to go to add Atlantic and/or Alaska. Any other areas would likely need to begin at Step 1 of process (Call for Information).<br>Congress – Pass |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | Section 12(a) decision removes prospective oil and gas region from consideration for future leasing programs. | legislation that directs additional sales to be held under the 2017-2022 Program.<br><br>President should issue a Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf From Leasing Disposition, reversing the decision to withdraw the Alaska and Atlantic areas. |
| 23. | **NMFS, Proposed Incidental Harassment Authorization (IHA) Regulations for GOM Geological and Geophysical Activities** | **NMFS BOEM** | Litigation settlement agreement allowing ongoing G&G activities in GOM expires on September 30, 2017. Regulations must be finalized by this date, and industry fully supports finalization of a reasonable final rule. However, recent BOEM document's (Draft PEIS and Rulemaking Petition) make the probability of a favorable regulatory outcome less likely. In addition, NMFS lack of progress on drafting the proposed rule makes it unlikely that the September 230, 2017 deadline will be met. | Need to assess legal options before an appropriate strategy recommendation can be made. |
| 24. | **Hydraulic Fracturing on Federal and Indian Lands**, 78 Fed. Reg. 31,635 (March 26, 2015) | **BLM** | Duplicative with state regulatory requirements. Adds requirements that are not reflective of actual operations, geology or the science. Among other | Rule has been struck down in litigation; case is on appeal by the government. Rule |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| | | | things, problematic issues include definition of usable water, integrity testing requirements, limitations on obtaining a variance for state regulations. | should be rescinded, or rule should be revised greatly to address technical issues and allow for variances for state regulations. |
| | **Priorities for Action in Near and Long Term** | | | |
| 25. | **OSHA Revisions to Process Safety Management Regulations** | **OSHA** | OSHA is considering the expansion of its Process Safety Management regulations to drilling and completion activities, and it is also considering the removal of enforcement discretion over upstream production activities. OSHA's PSM regulations are not fully transferable and fit for purpose with upstream activities. Furthermore, various standards and regulations are in place to prevent safety incidents in the upstream area. Efforts are ongoing to review the safety data, determine if there are gaps, and work with OSHA to find the best, fit for purpose solution to fill any gaps. | New Administration should focus on the best safety approach for upstream activities. |
| 26. | **BSEE Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems**; Final Rule 81 Fed. Reg. 61834 (September 7, 2016) | **BSEE** | There are still provisions of the final Production Safety System rule that are problematic for industry. We look forward to working with the new Administration to address those provisions of the rule that are still unworkable. Whether through interpretations, clarifications or revisions to the rule. | New Administration can revise rule or issue guidance to ensure consistent and workable compliance. |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| 27. | **Joint U.S. Fish and Wildlife Service and National Marine Fisheries Service Habitat Conservation Planning Handbook** | **FWS-NMFS** | FWS and NOAA jointly published a proposed revision to the agencies' 'Conservation Planning Handbook' in June of 2016. API, joined by several other industry trades, submitted comments in July 2016. These comments requested that the Services withdraw the proposed Handbook because it prescribes an overly rigid framework that will stymie voluntary conservation efforts and stifle responsible development. The services should create an appropriate guide for streamlining the developing and processing of HCPs that incentivizes voluntary conservation, including efficient collaboration and participation in the HCP process, and that provides regulated entities with reasonable and rational means to achieving approval for incidental take programs within the Services' statutory and regulatory authority. | Seek withdrawal and reproposal |
| 28. | **FWS Draft Policy on Interpretation of the Phrase "Significant Portion of its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species,"** originally published at 76 Fed. Reg. 76987 (Dec. 9, 2011). Final Policy published July 1, 2014. FWS-R9-ES-2011-0031. | **FWS** | Additional clarification is required in some instances. These include rigorous administration of the "high threshold" standard, if the standard is not to result in overprotection of species in areas where they are not under threat. The Services should modify the Draft Policy to create a strong presumption that critical habitat will be designated *only* within the SPR, if conditions within the SPR represent the basis for listing; and | Seek reproposal to address problematic issues. |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| | | | to allow under certain conditions for the listing, as threatened, of a species that qualifies as threatened based on its status in all of its range, but is endangered in an SPR. | |
| 29. | **Arctic National Wildlife Refuge, Alaska; Revised Comprehensive Conservation Plan and Final Environmental Impact Statement**, published 80 Fed. Reg. 4303 (January 27, 2015). FWS–R7–R–2012–N207. | **FWS** | ANILCA restricts executive authority to consider additional conservation units (including new wilderness areas) in Alaska except as authorized by ANILCA itself or further acts of Congress. With specific reference to the coastal plain of the Arctic NWR, where Congress has not at this time authorized oil and natural gas development to take place, experience in other areas demonstrates that the missions of the USFWS for wildlife conservation and ecosystem management, and oversight of recreational and subsistence uses can be achieved without designation of the coastal plain as wilderness. | Seek revocation |
| 30. | **NOAA Arctic Vision and Strategy** (February 2011), now integrated into NOAA Arctic Research Program and Arctic Action Plan. RIN 0648-XT64. | **NOAA** | Arctic policy decisions should avoid subjecting management of the region to new layers of government bureaucracy, or additional laws, regulations, or the creation of new advisory groups with unclear mandates that could lead to inter-agency disputes over interpretation and jurisdiction. Arctic policy should recognize that in addition to the obvious living resources, the region also contains significant mineral resources that support many industries that are crucial to maintaining a healthy | Support modification or revocation as called for by State of Alaska and Alaska delegation. |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | economy for the nation and the world. Properly regulated and managed, development of this strategically important energy resource can take place, and the vast majority of the U.S. Arctic region can remain available to the American people for multiple uses – subsistence, recreational and commercial. | |
| 31. | **FWS Proposed Policy to Incentivize Voluntary Pre-listing Conservation Actions**, originally published at 79 Fed. Reg. 42,525 (July 22, 2014). FWS–R9–ES–2011–0099. | **FWS** | FWS needs to decrease the administrative burdens inherent in implementing conservation programs and credit marketplaces by allowing these programs to be developed and implemented by the States and other qualified entities in a robust, transparent, and collaborative process.The Service's role should be limited to overseeing the States to ensure consistency, transparency, and efficiency. FWS can, and should, do so through funding, technical assistance, clear criteria for approval of plans, program models and templates, effective lines of communication, an easily accessible database of approved plans, and adherence to mandatory deadlines for approvals. The FWS should also take steps to make its proposed policy flexible, by providing landowners the ability to choose whether their conservation actions will be used to generate credits per the proposed policy or count as enrollment in a CCAA. | Support modification of policy consistent with comments submitted. |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
|---|---|---|---|---|
| 32. | **Secretarial Order 3330 "Improving Mitigation Policies and Practices of the Department of the Interior," called for the development of a DOI-wide mitigation strategy, which would use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region.** October 31, 2013. | **DOI** | This order called for the development of a DOI-wide mitigation strategy, which would use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region. This order should be withdrawn, and its call for "landscape scale" carefully evaluated with respect to possible conflicts with other laws that direct the actions of DOI agencies. It should only be republished if any such conflicts are addressed in favor of the existing statutory mandates. | Seek revocation |
| 33. | **"The Department of the Interior Climate Change Adaptation Plan for 2014" (Climate Change Adaptation Plan)**, provides guidance for implementing 523 DM 1 and "Executive Order No. 13653 – Preparing the United States for the Impacts of Climate Change ", (78 FR 66819). January 2014 (not published in the Federal Register). | **DOI** | This plan provided provides guidance for implementing 523 DM 1 and "Executive Order No. 13653 – Preparing the United States for the Impacts of Climate Change". It should be withdrawn and any subsequent climate change plan should be carefully examined so as not to conflict with existing statutory and regulatory mandates. | Seek revocation |
| 34. | **"Interior Policy Document: Implementing Mitigation at the Landscape Scale"**, directs agency officials (all bureaus and agencies) to use compensatory mitigation to offset impacts to public lands and to tailor mitigation actions to anticipate and address the impacts of climate change. October 23, 2015, 600 DM 6. | **DOI** | This document should be withdrawn and any successor document should only be put forward if it is determined that such a document does not conflict with any existing statutory and regulatory mandates. | Seek revocation |
| 35. | **Memorandum for Executive Departments and Agencies** | **DOI** | This memorandum directs agencies to develop and to institutionalize policies | Seek revocation, review and |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | **"Incorporating Ecosystem Services into Federal Decision Making"**, October 7, 2015, M-16-01. | | to promote ecosystem services (defined as benefits flowing from nature to people) where appropriate and practicable, in planning, investment, and regulatory contexts. What is not made clear is the priority to be given this directive in the context of the statutory direction given those same DOI agencies by their governing statutes. | republication |
| 36. | **Proposed Special Rule for the Polar Bear Pursuant to Section 4(d) of the Endangered Species Act**, originally published at 77 Fed. Reg. 23432 (April 19, 2012). Final Rule published 78 Fed. Reg. 11766 (February 20, 2013 FWS-R7-ES-2012-0009. | **FWS** | The polar bear has been managed for years under the synchronized ESA, MMPA and CITES regime. The protections afforded by the MMPA, CITES, and the ESA are more than sufficient to conserve, recover, and manage the polar bear. A revised final Rule should restate the FWS's well-founded position that the Rule does not require consultation simply on the basis of facilities' GHG emissions. And, based upon this same reasoning, any final Rule should likewise make clear that Section 9 take cannot be triggered by GHG emissions. The critical habitat for the species should be limited to those identifiable areas that "contain features essential to the conservation of the polar bear and that may require special management and protection" – *NOT* the species entire marine range. | Seek reproposal with critical habitat toed to discrete areas actually frequented by polar bears. |
| 37. | **Resource Management Plans and Final Environmental Impact Statements for various BLM Planning Areas (Greater** | **BLM** | The land use plan amendments (LUPAs) do not balance conservation of the GSG and elevate conservation of the GSG | Evaluate for revocation or revision through new |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | **Sage Grouse land Use Plan Amendments)**, originally published at 80 Fed. Reg. 30,709 (May 29, 2015) (BLM Notice of Availability); 80 Fed. Reg. 30,676 (May 29, 2015) (EPA Notice of Availability). | | above all other land uses in a manner wholly inconsistent with multiple use management. The LUPAs will severely restrict oil and natural gas development on many existing federal leases across GSG habitat. The LUPAs violate FLPMA and (where applicable) the National Forest Management Act because the Agencies have not afforded the public a meaningful opportunity to comment on the new components of the Proposed LUPAs. Also, in certain plans, the requirement that mitigation achieve a "net conservation gain" is inconsistent with FLPMA. The LUPAs inappropriately attempt to modify existing oil and gas leases, to unilaterally modify existing contract rights, to impose restrictions on existing leases that deny development or render development uneconomic, and to impose uniform conditions on existing leases that are not based on site-specific development. The LUPAs are inconsistent with the Energy Policy Act of 2005 and, in certain plans, improperly cede authority over oil and gas operations on federal leases to the FWS. | rulemaking action in the context of the importance the LUPAs have to the FWS no-list decision. |
| 38. | **Release of Final Control Technique Guidelines for the Oil and Natural Gas Industry** (October 27, 81 Fed. Reg. 74798) | **EPA** | Initiates states to incorporate control requirements for existing oil and gas sources within ozone implementation plans where non-attainment is moderate or above (or in OTR). | Work with EPA to determine whether final CTGs were prematurely finalized before adequate information on |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
|---|---|---|---|---|
| | | | | existing sources was collected. |
| 39. | **Environmental Integrity Project Petition to add Upstream Oil and Gas Operations to Toxic Release Inventory (TRI) under EPCRA.** | **EPA** | Petition filed by industry on October 24, 2012. EPA did not formally respond but did separately included TRI review of upstream sector in its 2013 regulatory agenda. On January 3, 2014 EPA published a notice of receipt of this petition and established a formal docket number to be used to view the petition and related documents. On January 7, 2015, EIP filed suit to compel EPA to make a decision on the petition. After almost a year of legal activity, on October 22, 2015 EPA denied all aspects of the original petition except with respect to natural gas processing facilities. EPA plans to move forward with a rulemaking process to add natural gas processing plants to the TRI program in 2017. | Support modification of rulemaking based on comments submitted |
| 40. | **Hydraulic Fracturing Chemicals and Mixtures** ANPRM originally published at 79 Fed. Reg. 28664 on May 19, 2014 with a comment period extension published at 79 Fed. Reg. 40703 on July 14, 2014. | **EPA** | Agency requested information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information under TSCA 8(a) or 8(d) or both. The information that would be collected under a TSCA section 8(a) and/or 8(d) rule for chemicals and mixtures used in hydraulic fracturing is already available to EPA. The Agency has more toxicity and exposure information on the additives used in | Support modification of rulemaking based on comments submitted. |

| Issue Number | Rule or Policy of Concern | Department or Agency | Issues/Problems with Rule or Policy (including desired outcomes) | Options for Redress |
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| | | | hydraulic fracturing than it has on many other existing chemicals, and available information is more detailed and extensive than information typically collected under TSCA. | |
| 41. | **Proposed Data Collection Submitted for Public Comment and Recommendations of a Proposed Information Collection Plan on "Health Risks for Using Private Water Wells for Drinking Water**, originally published at 81 Federal Register 12902 on and released as an ICR on March 11, 2016 and Submitted an Information Collection Request to OMB on the same topic on June 22, 2016 (81 Federal Register 40703). | **CDC** | In the notice, the plan includes a serious lack of detail regarding a tremendous number of variables which are sure to affect the outcome of the investigation – including the unintended consequence of attributing water contamination to operations simply due to a very poor survey tool. | Support modification of Plan based on extensive comments submitted. |
| 42. | **Greenhouse Gas Reporting Rule (GHGRP): Leak Detection Methodology Revisions for Petroleum and Natural Gas Systems (Subpart W)** | **EPA** | Finalized three new reporting requirements and added two new monitoring methods for detecting leaks from oil and gas equipment for facilities conducting equipment leak surveys in all of the segments subject to reporting under Subpart W. EPA needs to preserve consistency of measurements and emission estimation methodology among sites, basins and nationwide as well as with NSPS Subpart OOOOa. | Petition to Reconsider being considered. |
| 43. | **Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard FEMA Policy** 078-3 81 Fed. Reg. 57,402 (Aug. | **FEMA** | With discretion left to individual governmental agencies, there is a potential for an assortment of floodplain definitions as each of these jurisdictional entities attempt to apply the new risk-based approaches. Also, | Consider placing on hold or revoking the guidance (if finalized prior to the new administration). |

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| | 22, 2016); FEMA Policy: Guidance for Implementing the Federal Flood Risk Management Standard, 81 Fed. Reg. 56,558 (Aug. 22, 2016). | | the Regulatory Evaluation associated with the Proposed Rule uses data that is limited to coastal residential communities, greatly underestimates costs associated with this Proposed Rule and Supplementary Policy, and does not quantify benefits. The Guidance is needless - current FEMA rules, policy and maps already consider varying meteorological, land development, erosion and other causes; and maps are constantly being updated to reflect current conditions and technological advances. Limiting language in EO 13690 which states "to the extent permitted by law," FEMA's seeming obligation to amend existing regulations under the order is not absolute. | Also possibly consider revoking the underlying Executive Order 13690. |
| 44. | **NOAA/ONMS Flower Garden Banks National Marine Sanctuary Expansion** DEIS, 81 Fed. Reg. 37576 (June 10, 2016). | **ONMS** | Proposed expansion well beyond recommendation of Sanctuary Advisory Committee.<br>Agency needs to reengage with SAC/stakeholders to establish common ground, explain why additional areas are warranted. | Halt work on expansion. |
| 45. | **NOAA Ocean Noise Strategy Roadmap**, http://cetsound.noaa.gov/road-map, (June 1, 2016). | **NOAA** | There is a need for more baseline data and scientific study of potential acoustic effects and impacts, and a need to better coordinate, collaborate and share information within agencies and among all stakeholders. However, much of the ONS Roadmap is premised upon unwarranted policy assumptions that the desired goal is a return to pre- | Retract and revise Framework. |

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| | | | human conditions instead of balanced use of ocean resources; existing statutory mandates; regulatory measures are inadequate despite ongoing successes, and that an un-mandated comprehensive ocean noise regulatory regime may somehow be cobbled together and scaled up through unilateral actions of NOAA to address assumed chronic and cumulative potential acoustic impacts for which there is little to no scientific evidence.<br>Need to have a Framework to promote an approach that has a better balance between precautionary environmental policy and multiple ocean users. | |
| 46. | **National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes** (July 19, 2010). Executive Order 13547. | **CEQ** | Established the National Ocean Policy, including creation of Regional Planning Bodies (so far only present in Northeast and Mid-Atlantic. West Coast beginning to form.<br>Framework for development of ocean policy already exists under current statues and regulations.<br>No understanding of how federal actions will be influenced by regional ocean plans.<br>Lack of Congressional oversight. | Revoke Executive Order |
| 47. | **NOAA Marine Sanctuary Nomination Process**, 79 Fed. Reg. 33851 (June 13, 2014). RIN 0648-BD20. | **ONMS** | Controlled Sanctuary Evaluation List (SEL) process and selection criteria discontinued and replaced with a "…more grassroots, 'bottom-up' approach…"<br>Purpose of NMSA is to establish high | Eliminate current program. Reinstate SEL process. |

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| | | | quality sites of national significance, not to generate multiple nominations that fail to meet NMSA standards and consume valuable and limited agency resources. | |
| 48. | **NOAA Framework for the National System of Marine Protected Areas**, 80 Fed. Reg. 16626 (March 30, 2015). | **ONMS** | There appears to be greater weight toward promoting the creation of new MPAs over enhancing the effectiveness of existing MPAs.<br>There is more of an emphasis on ecological networks (i.e., on species rather than enhancing efficiencies).<br>There is limited guidance on how to address the lack of monitoring and evaluation of the current program. | Retract and Revise Framework. |
| 49. | **Critical Habitat Designation for Loggerhead Sea Turtle**, originally published at 79 Fed. Reg. 39755 (FWS - coastal areas) and 79 Fed. Reg. 39855 (NMFS – marine areas) on July 10, 2014. RIN 0648-BD27 and RIN 1018-AY71. | **NMFS**<br>**FWS** | Loggerheads in the DPS are meaningfully protected through a wide variety of overlapping multi-jurisdictional, multi-industry restrictions, prohibitions, and conservation measures that have led to historic levels of loggerhead nesting and abundance.<br>Designation of the sargassum habitat cause the proposed critical habitat designation to be the largest in the history of the ESA, it would be based on physical and biological features that are poorly understood, ephemeral, and largely disconnected from the post-hatchling populations it is intended to protect. | Need legal analysis to determine full range of possibilities. |
| 50. | **Notice to List the Gulf of Mexico Bryde's Whale as Endangered**, 81 Fed. | **NMFS** | Comments under development. | Need legal analysis to determine full range |

| ISSUE NUMBER | RULE OR POLICY OF CONCERN | DEPARTMENT OR AGENCY | ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES) | OPTIONS FOR REDRESS |
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| | Reg. 88639 (December 8, 2016). RIN 0648-XD669. | | | of possibilities. |
| 51. | **FWS Revised Candidate Conservation Agreements with Assurances Policy**, originally published, 81 Fed. Reg. 26,817 (May 4, 2016). Policy has not been finalized to date. FWS-HQ-ES-2015-0177 | **FWS, NMFS** | Any changes to the Policy must further the overarching goal of CCAAs: to encourage early and voluntary conservation. The Services should not incorporate a "net conservation benefit" standard into the CCAA policy, which is ambiguous and which undermines assurances provided in CCAAs and their associated permits. The draft revised policy makes so many significant changes to existing policy that it fails to comply with the requirements of the Administrative Procedure Act. | Seek revocation. |
| 52. | **FWS Eagle Permits; Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests**, originally published at 81 Fed. Reg. 27933 (May 6, 2016). Final rule published December 16, 2016. FWS–R9–MB–2011–0094. | **FWS** | Where possible, FWS should encourage and expand the use of BMPs appropriate to protection of eagles under Avian Protection Plans. FWS should devote its resources to develop flexible but effective APP guidelines for the oil and gas industry operations located in the vicinity of eagle roosts or nests similar to the guidelines developed for the electric utility industry. | Seek modification of the rule to address major issues. |
| 53. | **Various Other ESA Species of Concern** | **FWS** | Including, but not limited to:<br>Greater Sage Grouse<br>Lesser Prairie Chicken<br>Dunes Sagebrush Lizard<br>Northern Long Eared Bat, and<br>candidate species among pollinators, | Species specific, but will include engagement with the agencies, litigation, and science based advocacy. Consider |

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| | | | fresh water mollusks, and marine mammals. | research and gathering data on threats to species and habitats commonly alleged in important O&G areas, and on threats commonly attributed to O&G operations to be in a position to refute common and inaccurate assumptions in order to best assure license to operate. |