

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Oil and Natural Gas Sector:)	
Emission Standards for New,)	
Reconstructed, and Modified)	
Sources: Stay of Certain)	Docket No. EPA-HQ-OAR-2010-0505
Requirements)	Docket No. EPA-HQ-OAR-2017-0346
)	
Oil and Natural Gas Sector)	<i>Via regulations.gov and email</i>
Emission Standards for New,)	<i>December 8, 2017</i>
Reconstructed, and Modified)	
Sources: Three Month Stay of)	
Certain Requirements)	

We submit these comments on behalf of Clean Air Council, Clean Air Task Force, Center for Biological Diversity, Earthjustice, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Environmental Law and Policy Center, Natural Resources Defense Council, Sierra Club, and National Parks Conservation Association (together, “Joint Environmental Commenters”). There is an urgent need to reduce emissions of methane and other harmful pollutants from the U.S. oil and natural gas sector, and accordingly, Joint Environmental Commenters strongly oppose EPA Administrator Scott Pruitt’s efforts to remove or delay commonsense protections applicable to these sources, whether styled as a proposed stay or as revision of the current compliance deadlines.

Introduction

The current New Source Performance Standards for emissions of air pollutants from new and modified sources in the oil and gas sector have been in effect and delivering critical climate and public health benefits for over a year, since August 2016. *Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed, and Modified Sources*, 81 Fed. Reg. 35,824 (June 3, 2016) (the “NSPS” or “2016 Rule”). As we explained in our earlier comments, the NSPS is based on widely-available and low-cost technologies and operational practices that had been required in certain states well before the NSPS required their use throughout the country. The NSPS delivers critical reductions of dangerous air pollution, including averting 510,000 tons of methane, 210,000 tons of smog-forming VOCs, and 3,900 tons of hazardous air pollutants, like benzene, every year by 2025. 81 Fed. Reg. at 35,827.

Yet, despite all of the above, Administrator Pruitt has been unrelenting in his efforts to roll back these critical protections, regardless of whether he has statutory authority or factual bases for doing so. The Administrator’s latest effort—in the guise of two “notices of data

availability” that do not make any data available—does not make the rollbacks any more lawful, factually supported, or sensible. See *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements*, 82 Fed. Reg. 51,788 (Nov. 8, 2017); *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements*, 82 Fed. Reg. 51,794 (Nov. 8, 2017) (collectively, “the supplemental notices”). To the contrary, all the supplemental notices demonstrate is that the Administrator has set his mind on a predetermined outcome for which he is now in search of statutory authority and factual support. For the reasons stated in our earlier comments, and additional reasons contained in these comments, EPA cannot lawfully suspend the NSPS or extend its compliance deadlines based on the current proposals.

The Administrator has endeavored single-mindedly to roll back the NSPS since at least April 18, 2017, when he wrote to the American Petroleum Institute (“API”) and other industry groups informing them that he was “convening a proceeding for reconsideration,” and promising to stay key provisions of the NSPS during that reconsideration. Letter from Scott Pruitt, EPA Administrator, to Howard Feldman, API, *et al.*, Re: Convening a Proceeding for Reconsideration of Final Rule, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed and Modified Sources, Published June 3, 2016, 81 Fed. Reg. 35,824,” EPA-HQ-OAR-2010-0505-10792 (April 17, 2017). On June 5, 2017, two days *after* a key compliance deadline for preventing fugitive emissions (or leaks), the Administrator purported to stay for 90 days the NSPS requirements for those emissions and additionally the pneumatic pump standards and certification of closed vent systems by a professional engineer retroactively to June 2, 2017, pursuant to his authority under section 307(d)(7)(B). *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay*, 82 Fed. Reg. 25,730 (June 5, 2017). The D.C. Circuit swiftly concluded that the Administrator’s “90-day stay was unauthorized by section 307(d)(7)(B) and was thus unreasonable,” and vacated the agency’s stay, restoring industry’s compliance obligations. *Clean Air Council v. EPA*, 862 F.3d 1, 8 (D.C. Cir. 2017).

Meanwhile, on June 16, 2017, EPA published two proposed rules seeking to stay the NSPS by three months and two years respectively. *Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed and Modified Sources: Three Month Stay of Certain Requirements*, 82 Fed. Reg. at 27,641 (June 16, 2017); *Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed and Modified Sources: Stay of Certain Requirements*, 82 Fed. Reg. 27,645 (June 16, 2017) (collectively, the “stay proposals”). In those proposals, EPA cited no legal authority for the stays and specifically directed commenters *not* to comment on any of the substantive requirements of the NSPS. 82 Fed. Reg. at 27,648. Joint Environmental Commenters duly filed comments opposing the proposals and explaining why EPA has no legal authority to stay final rules outside of the limited authority provided by section 307(d)(7)(B) of the Clean Air Act.¹ After certain industry commenters strayed well beyond EPA’s directive and

¹ Comments of Clean Air Council, Clean Air Task Force, Center for Biological Diversity, Earthjustice, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Environmental Law and Policy Center, Natural Resources Defense Council, Sierra Club, & National Parks Conservation Association (“Environmental Comments”), (Aug. 9, 2017) EPA-

filed comments explicitly related to the substantive requirements of the NSPS,² Joint Environmental Commenters filed supplemental comments explaining why the industry’s technical comments did not support staying the NSPS pending reconsideration.³ Joint Environmental Commenters will not repeat the arguments made in those filings here, and incorporate them in full by reference.

Then, on November 8, 2017, the Administrator published the two notices on which the agency now requests comment. The supplemental notices seek additional comment on new potential legal theories raised by industry commenters regarding EPA’s authority to suspend the standards. The supplemental notices also propose a brand new regulatory action nowhere contemplated in the stay proposals—a *substantive revision* of the NSPS to “phase-in”—i.e., delay—the already passed deadlines for certain NSPS requirements based upon unsubstantiated (and unattributed) “suggestions” and “feedback” that operators are having difficulty complying with the NSPS requirements. Though styled as “notices of data availability,” the notices do not actually make *any* data available. Remarkably, given the alleged basis for the Administrator’s new proposed regulatory action, the Administrator does not, through these purported “notices of data availability,” make available for comment the compliance data that he received from operators on or before October 31, 2017, the deadline for operators’ required annual compliance reports. These reports are public documents and would include factual data going to the very difficulties the Administrator vaguely alleges. Nor does the Administrator provide any data from any other source to support his proposed conclusions that the compliance deadlines need to be extended due to compliance difficulties. In light of the new regulatory proposal, Joint Environmental Commenters requested that the Administrator provide these data, extend the comment period and hold a public hearing.⁴ As of the date of these comments, Joint Environmental Commenters have not received any response from the Administrator.

HQ-OAR-2010-0505-11381 available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-11381>.

² See Comments of American Petroleum Institute (“API Technical Comments”), (Aug. 8, 2017) EPA-HQ-OAR-2010-0505-12245 available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-12245>.

³ Supplemental Comment of Clean Air Council, Clean Air Task Force, Center for Biological Diversity, Earthjustice, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Environmental Law and Policy Center, National Parks Conservation Association, Natural Resources Defense Council, & Sierra Club (“Supplemental Environmental Comments”), (Aug. 25, 2017) EPA-HQ-OAR-2010-0505-12359, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-12359>.

⁴ Request for Publication of 40 C.F.R. Part 60 Subpart OOOOa Annual Compliance Reports and for Extension of Comment Periods on EPA’s Notices of Data Availability on Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements and Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements (“Request for Compliance Reports”), (Nov. 14, 2017) EPA-HQ-OAR-2010-0505-12379 available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-12379>; Request for Public

The Administrator’s new regulatory proposal—to “phase in” the deadlines that have already passed—is no more lawful than his earlier proposal, still apparently under consideration, to suspend the requirements pending reconsideration. Indeed, the two theories are in many respects at odds with each other, and betray the Administrator’s patent desire to quickly relieve the industry of the requirement to comply through any possible means. One theory—staying the deadlines—tells operators, leak detection and repair (“LDAR”) providers, and professional engineers not to do anything because EPA is reconsidering and may significantly revise (or even rescind) the NSPS. The other theory—“phasing in” the deadlines—tells operators, LDAR providers and professional engineers to ramp up their capacity in order to enable operators to comply with the rule, albeit on an extended schedule. The strong tensions between EPA’s new regulatory “phase-in” rationale and EPA’s original stay rationale make clear that the agency has a predetermined outcome for which it seeks legal authority and factual support. The Administrator’s new and wholly unsupported compliance revision proposal is nothing more than an attempt to do an end-run around the limits that Congress placed on EPA’s authority to stay final regulations.

The supplemental notices also blatantly violate the procedural requirements of the Clean Air Act. As an initial matter, since they provide no data, they are not “notices of data availability” at all. Rather they are brand new proposals that propose a new regulatory alternative—a substantive revision of the NSPS.⁵ *See EDF v. Gorsuch*, 713 F.2d 802, 816 (D.C. Cir. 1983) (“[I]t is the substance of what the [agency] has purported to do and has done”—*not* how the agency has “labeled it”— “which is decisive.”). Because this is in fact a new proposal, despite the title EPA gave it, the Act requires the Administrator to give interested parties an opportunity for “oral presentation of data, views, or arguments” at a hearing and keep the record open for thirty days after that hearing. 42 U.S.C. § 7607(d)(5). A new proposal also generally requires at least a 60-day comment period, not the truncated 30-day period provided here. *See e.g.*, Exec. Order 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993); Exec. Order 13,563, 76 Fed. Reg.

Hearing Regarding EPA’s Notices of Data Availability on Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements and Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements (“Request for Public Hearing”), (Nov. 21, 2017) EPA-HQ-OAR-2010-0505-12387, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-12387>.

⁵ EPA’s Action Development Process guidance for staff indicates that notices of data availability are intended to be used “to provide notice to the public of data developed or received by EPA on a particular issue or topic,” and “do not impose legally binding requirements.” [https://yosemite.epa.gov/sab/SABPRODUCT.NSF/5088B3878A90053E8525788E005EC8D8/\\$File/adp03-00-11.pdf](https://yosemite.epa.gov/sab/SABPRODUCT.NSF/5088B3878A90053E8525788E005EC8D8/$File/adp03-00-11.pdf), at 93. By contrast, a Supplemental Notice of Proposed Rulemaking (or “SNPRM”) “typically proposes a new regulatory alternative.” A new regulatory alternative, in turn, is “a substantive or enforceable rule provision or regulatory option that was neither included in the original regulatory text of the proposed rule nor with [sic] the scope of the discussion in the preamble.” *Id.* at 94. EPA policy “is that a NODA ... should only announce the availability of the new data and should not otherwise propose or identify additional regulatory alternatives or change the original proposed rule.” *Id.*

3,821 (Jan. 21, 2011). Though Joint Environmental Commenters requested additional time to comment and a hearing, *supra* n. 4, EPA has not responded in any way.

Moreover, the Act requires that a regulatory proposal include a “statement of basis and purpose,” including a summary of “the factual data on which the proposed rule is based,” and “the methodology used in obtaining the data and in analyzing the data.” 42 U.S.C. § 7607(d)(3). EPA must also make available for public comment in the docket for the proposed rule “[a]ll data, information, and documents ... on which the proposed rule relies.” *Id.* Here, the agency did not provide through the supplemental notices or anywhere else in the docket any of the factual data upon which its compliance revision is based, much less the methodology used in obtaining or analyzing that data or the compliance reports now in the agency’s possession that directly speak to these questions. These procedural violations render the current comment period inadequate and meaningless.

Ultimately, whichever EPA is trying to do—stay or revise the requirements of the NSPS—there is no persuasive factual or legal basis for doing so. The result would be the unnecessary emissions of more harmful air pollution, exacerbating human health impacts and climate damages, contrary to the purposes of the Clean Air Act. Indeed, if anything, factual developments since the NSPS were finalized support EPA’s requiring even greater emissions reductions and moving expeditiously to curb emissions from existing sources. We strongly oppose, and urge EPA to abandon, this misguided and unauthorized rulemaking.

I. The Stay/Compliance Revision Would Negatively Affect the Public Health and Welfare and Is Unwarranted.

As we explained in our earlier comments, the requirements of the NSPS are commonsense requirements to address the urgent problem of climate change. Environmental Comments at 3. EPA has a legal mandate to protect against the harms associated with climate change and the threats that climate pollutants like methane pose to public health and welfare. Methane emissions from the oil and gas sector, the largest domestic industrial source of methane, significantly contribute to this threat. *Id.* at 3-5. Emissions from the sector also threaten the health of local communities with smog-forming volatile organic compounds and carcinogenic hazardous air pollutants like benzene. *Id.* They also threaten the air quality in our National Parks and the experience and health of their visitors. *Id.*

The NSPS addresses these threats in a low cost, commonsense way that several large oil and gas producing states have successfully implemented. In developing the NSPS, EPA amassed an extensive technical record, including information on low-cost technologies that are readily available to reduce these emissions. In fact, since EPA promulgated the NSPS, companies have declared their ability to cut emissions by even more than the NSPS requires.⁶ By contrast, the

⁶ See XTO Energy, *Methane Emissions Reduction Program* (“XTO Energy Announcement”) (last visited Nov. 28, 2017), <http://www.xtoenergy.com/responsibility/current-issues/air/xto-energy-methane-emissions-reduction-program#/section/1-regulatory-requirements> (announcing not only that “XTO is complying with recent EPA (New Source Performance Standards) ... regulations,” but also that it will expend “considerable effort beyond regulatory requirements.”).

proposed stay or extension would significantly increase harmful emissions over the duration of the delay, without any legitimate rationale for doing so. The increased emissions caused by the proposed stay or extension are explained in detail in the expert report prepared by Environmental Defense Fund scientist Dr. David Lyon, submitted separately in the dockets for both supplemental notices and incorporated herein by reference. In that analysis, Dr. Lyon found, using EPA's own methodologies, that suspending the standards for 2 years would result in approximately 240,000 tons of climate-destabilizing methane emissions, 65,000 tons of VOC emissions, and nearly 2,500 tons of hazardous air pollution.

II. Administrator Pruitt Lacks Authority to Stay the Standards.

In the supplemental notices, EPA seeks comment on a number of potential sources of legal authority for a stay offered by industry commenters in their earlier comments. Specifically, EPA seeks comment on whether it has authority under two Clean Air Act provisions: section 111(b)(1)(B), which authorized EPA to promulgate the NSPS in the first place, and section 301(a), which the agency claims provides it with "broad authority to prescribe regulations, including revisions to prior rulemakings, as necessary to carry out the Administrator's authorized functions under the statute." 82 Fed. Reg. at 51,789; *see also id.* at 51,791 ("EPA believes that the proposed stay of the fugitive emission requirements pending its reconsideration process is reasonable and authorized under sections 111 and 301 of the CAA."). EPA also solicits comment on whether Section 705(a) of the Administrative Procedure Act provides the agency with "authority to stay these requirements pending judicial review." *Id.*

As we explained in our earlier comments, Environmental Comments at 7-13, *none* of these provisions authorizes a stay of a final rule pending reconsideration. Section 111 explicitly states that "[s]tandards of performance or revisions thereof *shall become effective upon promulgation,*" 42 U.S.C. § 7411(b)(1)(B), and the Clean Air Act explicitly limits stays pending reconsideration to one 3-month period not available here. The only authority EPA has to alter the NSPS's compliance deadlines is through a lawful *revision* of the standard. Here, we address additional arguments made by the Administrator not addressed in our earlier comments related to EPA's lack of authority to *stay* the NSPS. In Part III, we discuss why EPA has not followed section 111's substantive and procedural requirements to *revise* the NSPS.

A. The Administrator does not have authority to stay the NSPS pending reconsideration under section 111(b)(1)(B).

The Administrator appears to argue that because section 111(b)(1)(B) supplied EPA with authority to promulgate the NSPS in the first instance, and because agencies have "inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation," section 111(b)(1)(B) must also grant him the authority to stay the NSPS pending reconsideration. 82 Fed. Reg. at 51,789-90 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983)).

Yet, while agencies may have authority to reconsider and amend a final rule within the substantive and procedural constraints imposed by the statute, that authority does *not* entail the

additional power to suspend the rule while reconsideration is pending. Courts have rejected the theory that agencies have “inherent authority” to alter duly promulgated rules outside the bounds of their statutory constraints and the Administrative Procedure Act. *See, e.g., Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 203 (2d Cir. 2004) (striking down Department of Energy’s extra-statutory suspension of duly promulgated efficiency standards and rejecting the theory that agencies have “inherent power to reconsider a final rule beyond the specific power to reconsider granted by statute”); *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (citing *Abraham* and rejecting the argument that agencies have “inherent authority” to stay final rules pending reconsideration). Moreover, nothing in the text or case law of section 111(b)(1)(B) suggests that EPA may, under its authority, stay the requirements of a previously-issued rule pending reconsideration, or that the Act’s other limitations on stays pending reconsideration do not apply. To the contrary, section 111(b)(1)(B) specifically directs that final rules “shall become effective upon promulgation.” And section 307(d) establishes the procedures that EPA must follow to establish or revise a Section 111(b) rule. Here, the Administrator points to nothing in section 111(b)(1)(B) that grants him authority to suspend a rule.

Section 111(b)(1)(B) sets certain statutory criteria and deadlines for proposing, promulgating, reviewing, and revising new source performance standards. Section 307(d) establishes the procedures that EPA must follow to establish or revise a new source performance standard. These are the substantive and procedural requirements that EPA must follow to change a promulgated rule, including delaying compliance with that rule. Section 307(d)(7)(B) sets forth the exclusive conditions under which EPA may stay an existing rule outside of these procedures, and no other stay authority—whether under more lenient conditions or for a longer period—is consistent with the statutory text. It seems highly unlikely that when Congress specifically deliberated on the question whether EPA should be authorized to stay a rule pending reconsideration and carved out a narrow exception, otherwise ordering that new source performance standards “shall become effective upon promulgation,” that it simultaneously intended EPA to have much broader authority to issue a stay so long as it gave notice and took comment on its desire to stay the standards while it reconsidered them. *United States v. Philip Morris USA, Inc.*, 396 F.3d 1190, 1200 (D.C. Cir. 2005) (“Where a statute has a ‘comprehensive and reticulated’ remedial scheme, we are reluctant to authorize additional remedies; Congress’ care in formulating such a ‘carefully crafted and detailed enforcement scheme provides strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly”) (citing *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002) (interpreting ERISA).

While section 111(b)(1)(B) permits—indeed, requires—EPA to regularly review and consider amendments to previously promulgated new source performance standards, nowhere does it contemplate that the agency may simply suspend those standards while a review or reconsideration proceeding is ongoing.

EPA rehashes a host of purported reasons for the stay pending reconsideration, including the alleged lack of clarity in the AMEL and pneumatic pump provisions, and the need to assess the cost of certification by a professional engineer. 82 Fed. Reg. at 51,791. As we discussed in our earlier comments, and explain further below none of these rationales justify a stay or deadline extension pending review. *See* Environmental Comments at 7-13 & 19-23, *infra* Part

II.B. But more to the point here, EPA simply does not have the power to stay a final rule anytime it raises a concern about the implementation of that rule and wishes to reconsider. The plain language of the Act—including its direction that new source performance standards “shall become effective upon promulgation” and its provision of a narrow authority to stay a promulgated rule—specifically precludes such power. Such power would permit EPA to undermine critical (and required) protections *without* justifying an amendment to the regulations based upon the statutory factors and the factual record, and completely erode regulatory certainty for regulated parties and the public alike. *See* Environmental Comments at 12-13.

B. The Administrator does not have authority to stay the NSPS pending reconsideration under section 301(a).

Industry commenters also cited section 301(a)—the Clean Air Act’s grant of general rulemaking authority—as authorizing the proposed stay. EPA now asserts that section 301(a) “provides the Agency with broad authority to prescribe regulations, including revisions to prior rulemakings, as necessary to carry out the Administrator’s authorized functions under the statute.” 82 Fed. Reg. at 51,789 (*citing Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980) (“The power to decide in the first instance carries with it the power to reconsider.”)).⁷ Because (the Administrator asserts) his proposed action “is consistent with the purposes of the CAA,” it is thus “authorized under section 301(a) of the CAA.” 82 Fed. Reg. at 51,790.

But section 301 does not convey any authority to circumvent the substantive requirements of section 111 or the rulemaking procedures of section 307(d). It allows for prescribing rules, but if those rules concern, for example, promulgating or revising a section 111 new source performance standard, such rules must be issued in conformity with section 111’s substantive requirements and section 307(d)’s procedural requirements.

The authority granted by section 301(a) is not nearly as broad as the Administrator asserts. Section 301 provides that “[t]he Administrator is authorized to prescribe such regulations subject to section 307(d) as are *necessary* to carry out his functions under this chapter.” 42 U.S.C. § 7601(a)(1) (emphasis added). The courts have consistently “decline[d] to read ... open-ended power into section 301.” *Nat. Res. Def. Council v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992). Instead courts have required that regulations promulgated under section 301 be both necessary and appropriate.⁸ EPA’s proposed stay here is neither necessary nor appropriate, and

⁷ Notably, Joint Environmental Commenters here do not argue that EPA cannot *reconsider* the NSPS, but instead that EPA cannot take the distinct action of *staying* the NSPS during that reconsideration.

⁸ *E.g.*, *Alabama Power Co. v. Costle*, 636 F.2d 323, 403 (D.C. Cir. 1979) (finding an EPA rule unauthorized under section 301, and concluding that “[a]n extension of PSD permit requirements beyond the wording of the Act is therefore neither necessary nor appropriate to carry out EPA’s functions under the Act.”); *NRDC v. EPA*, 22 F.3d 1125, 1148 (D.C. Cir. 1994) (“[Section 301] does not provide the Administrator ‘*carte blanche*’ authority to promulgate any rules, on any matter relating to the Clean Air Act, in any manner that the Administrator wishes,” and instead “allow[s] the promulgation of rules that are necessary and reasonable to effect the purposes of

instead directly conflicts with the Act’s provisions requiring that final rules take effect and limiting stays pending reconsideration, as well as the Act’s specific substantive and procedural requirements for amending a rule. Moreover, as discussed below *infra* 14-19, EPA’s proposal ignores most of section 111’s mandatory substantive factors for determining BSER, and thus runs contrary to the entire purpose and structure of this section of the Clean Air Act.

In their comments on the proposed stays, industry groups expressed support of the Administrator’s action by citing past instances in which the agency issued section 301(a) regulations that were needed in order to affirmatively advance the goals of the statute. *See, e.g., Citizens to Save Spencer Cty.*, 600 F.2d at 873 (upholding EPA’s section 301(a)(1) rule that resolved a conflict between two provisions of the Act); *NRDC*, 22 F.3d at 1148 (agreeing that EPA had authority under section 301 to issue binding basic inspection and maintenance programs rules). But while section 301 may be used to resolve a statutory conflict, as in *Spencer County*, or fill a gap, as in *NRDC* (notably, in both cases, upon a full factual record), it cannot be used to do something that *conflicts* with other provisions of the Act. Here, the agency’s proposed stays of the NSPS are neither necessary nor appropriate under the Clean Air Act, but rather directly conflict with the Act.

The Administrator solicits comment on the legal theory proposed by API that “EPA’s general rulemaking authority under section 301(a) of the CAA authorizes a rulemaking staying these requirements because ‘Congress has not written a “clear impediment to the issuance” of such stay.’” 82 Fed. Reg. at 51,789 (citing *NRDC v. EPA*, 22 F.3d at 1148). In addition to the fact that—as *NRDC*, 22 F.3d at 1148 makes clear—section 301 does not grant *carte blanche* authority so long as there is no legal impediment, here—as just discussed—Congress *has* written such an impediment. In addition, as discussed further below, *infra* 10-12, Congress established fixed, explicit, and mandatory substantive requirements and timelines by which EPA must revise a set of performance standards.

The Administrator also cites non-Clean Air Act law to assert that section 301 authorizes any regulation “so long as it is ‘reasonably related to the purposes of the enabling legislation.’” 82 Fed. Reg. 51,790 (citing *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973); *Thorpe v. Housing Auth. of City of Durham*, 393 U.S. 268, 280-81 (1969)).⁹ This case

the Act.” (quoting *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979)); *NRDC v. EPA*, 749 F.3d 1055, 1063 (D.C. Cir. 2014) (“[W]e have consistently held that EPA’s authority to issue ancillary regulations is not open-ended, particularly when there is statutory language on point.”); *North Carolina v. EPA*, 531 F.3d 896, 922 (D.C. Cir. 2008), *on reh’g in part*, 550 F.3d 1176 (D.C. Cir. 2008) (striking down a regulation promulgated under Section 301 because EPA could not demonstrate that it was “necessary” to fulfill the purposes of the Act).

⁹ Notably, in the Truth in Lending Act case cited by the Administrator, the Court found that the regulation at issue was necessary to prevent actors from “evad[ing] the purposes of the statute.” *See Mourning*, 411 U.S. at 369-70. Here, if anything, it is the rule EPA purports to promulgate under section 301 that would evade the purposes of the Clean Air Act. Moreover, section 301 of the Clean Air Act is directly analogous to the general rulemaking provision at issue in *Abraham*,

law, however, directly conflicts with case law holding that the Clean Air Act does *not* provide such broad authority and the more specific language limiting the agency's proposed actions found in sections 111 and 307. It further bears noting that this is an extraordinary interpretation of section 301's authority. Actions to control dangerous air pollution are consistent with the purposes of the Act, yet to our knowledge EPA has never before claimed that section 301 authorizes it to do *anything* that would control dangerous air pollution.

As we explained in our earlier comments, Environmental Comments at 7-12, the D.C. Circuit has already considered and rejected the argument that 301 provides authority to stay promulgated standards. In *Natural Resources Defense Council v. Reilly*, the court held that EPA had no authority to stay a final section 112 emission standard under section 301(a) while reconsideration was pending, even via a notice-and-comment rulemaking. 976 F.2d at 41. Specifically, the court ruled that section 301(a)'s general grant of rulemaking authority could not displace section 112's explicit schedule for issuing standards. Thus, the court concluded that EPA's sole mechanism for staying final standards was the "single, three-month period authorized by section 307(d)(7)(B)," a provision that the D.C. Circuit has already held does not apply here. *Clean Air Council*, 862 F.3d at 8-12. The Administrator now tries to distinguish *Reilly* on the grounds that "the promulgation of [the NSPS] was discretionary and not compelled by CAA section 111(b)(1)(B)." 82 Fed. Reg. at 51,790. This assertion is both irrelevant and wrong, and offers no support for the Administrator's proposed stays.

It is irrelevant because *Reilly* applies regardless of whether the NSPS is characterized as "mandatory" or "discretionary." Section 111(b) clearly states that "standards of performance or revisions thereof shall become effective upon promulgation." 42 U.S.C. § 7411(b). This language applies to *all* standards of performance and revisions thereof. This is just as "clear [a] statutory command" as the "highly circumscribed [regulatory] schedule" that the *Reilly* court held could not be undercut by a section 301(a) rulemaking. 976 F.2d at 41. Because courts "[do] not allow[] the general grant of rulemaking power embodied in section 301 to trump the specific provisions of the [Clean Air] Act," the agency has no authority to use this general rulemaking power to make an end-run around section 111(b)'s "shall become effective" clause. *Id.* Should the agency wish to alter when and how a final standard takes effect, it must formally revise that standard in accordance with the substance and following the process described in sections 111(b)(1)(B) and 307(d). EPA has not done that here. In light of section 111(b)(1)(B)'s specific procedures for revising standards, its absence of any express authority to stay standards, and section 307(b)(7)(B)'s narrow exception for stays pending reconsideration, section 111(b)'s "shall become effective" clause ousts any authority the agency might have to stay a final standard apart from the narrow window permitted by section 307(d)(7)(B).

It is also wrong because EPA had no more discretion to not issue the NSPS under section 111(b) than it did to not issue the radionuclide standards at issue in *Reilly* under section 112. The statutory mandate at issue here is indistinguishable from the one in *Reilly*. As it existed at the

yet the court concluded that provision did *not* grant the Department of Energy authority to suspend promulgated efficiency standards. *See* 42 U.S.C. § 6298 ("The Commission and the Secretary may each issue such rules as each deems necessary to carry out the provisions of this part."); *Abraham*, 355 F.3d at 203.

time of *Reilly*, section 112 did not specifically mandate EPA to regulate radionuclides. Rather, it required EPA to list categories of pollutants that it determined were hazardous, and then to issue source-specific emission standards for those pollutants upon a set schedule. 42 U.S.C. § 7412(b) (Supp. 1990). In 1979, EPA listed radionuclides as a hazardous air pollutant, at which point it had an obligation to issue standards according to the fixed schedule described in section 112. Furthermore, in its 1990 Clean Air Act amendments, Congress specifically created a discretionary carve-out in section 112(d)(9) that permitted EPA not to issue radionuclide standards for a particular a category of facilities if it found (through a rulemaking) that those standards would be duplicative of Nuclear Regulatory Commission standards. 42 U.S.C. § 7412(d)(9). Because EPA had not yet made such a finding at the time of *Reilly*, it could not exercise its discretion not to issue (or to delay issuance of) the standards in question.

The same is true of the section 111. Under the statute, no less frequently than once every eight years, EPA “shall ... review and, if appropriate, revise such standards.” *Id.* (emphasis added). Furthermore, the agency’s process for reviewing and revising section 111(b) standards must “follow[] the procedure required by this subsection for promulgation of such standards.” *Id.* Consequently, the provision’s deadlines for *promulgating* standards equally apply to *revising* standards: once EPA initiates its review, it must propose all appropriate amendments to the standards within one year and finalize those amendments within one year of the proposal. This schedule is closely analogous to the “highly circumscribed schedule” at issue in *Reilly*, which required proposed standards within 180 days of EPA listing a hazardous air pollutant and final standards within 180 days of the proposal. Any other interpretation would effectively read out of the statute the requirement that EPA “follow[] the procedure required . . . for promulgation of such standards” when reviewing and revising those standards.¹⁰

The Administrator responds with a bizarre argument that the only performance standards that are *required* under section 111 for any given source category are those that the agency establishes the *first time* it regulates the source category after its initial listing. According to the Administrator, any subsequent regulation that either controls an emission point or piece of equipment within that same source category that was not previously covered or establishes limitations for pollutants emitted by that category that were not covered under the first set of regulations is entirely discretionary. 82 Fed. Reg. at 51,789 (“In addition to the mandatory

¹⁰ In fact, EPA’s discretion under section 111(b)(1)(B) is even more limited than it was in *Reilly*. Whereas section 112 included a provision that specifically permitted the agency not to issue radionuclide standards if it found them to be duplicative, 42 U.S.C. § 7412(d)(9), section 111(b)(1)(B) includes no such carve-out allow EPA to forgo (or delay) issuing performance standards under a defined set of circumstances. In fact, section 112(q)(4) expressly stayed, for a period of two years, EPA’s radionuclide standards for medical facilities, a stay which could only be removed upon a finding by EPA that the Nuclear Regulatory Commission standards for these sources were insufficient. *Id.* § 7412(q)(4). These provision shows that Congress knew how to permit or establish stays of Clean Air Act emission standards when it wanted to, which it did not do in the case of section 111(b)(1)(B). *See e.g., Meghriq v. KFC Western, Inc.*, 516 U.S. 479, 485 (1996) (“Congress . . . demonstrated in CERCLA that it knew how to provide for the recovery of cleanup costs, and . . . the language used to define the remedies under RCRA does not provide that remedy.”).

obligations ... the EPA has discretion under CAA section 111(b)(1)(B) to add new standards of performance for additional pollutants or emission sources not previously covered concurrent with, or independent of, the 8-year review.”). EPA does not explain why, in the agency’s argument, Congress would have thought to create such a distinction in section 111, nor does it point to any words in the statute that it believes establish these legally separate categories of standards.

To the extent EPA simply argues that it may regulate additional pollutants or point sources within a given industrial category less than eight years from its last review, Joint Environmental Commenters agree; after all, the statute requires a review and revision “*at least every eight years.*” 42 U.S.C. § 7411(b)(1)(B) (emphasis added). That eight-year requirement, however, simply addresses the timing of reviews and does not create any procedural or substantive discretion not otherwise found in sections 111 and 307. There is simply no statutory support for any distinction between the first point source or pollutant regulated within a source category and subsequent point sources and pollutants that EPA deems appropriate for regulation.

The language of section 111(b) is mandatory: EPA “*shall . . . publish (and from time to time thereafter shall revise) a list of categories of stationary sources;*” it “*shall include a category of sources in such list if in [its] judgment it causes, or contributes significantly to*” dangerous air pollution; within one year of listing a source category, EPA “*shall publish proposed regulations, establishing Federal standards of performance*¹¹ for new sources within such category;” it “*shall afford interested persons an opportunity for written comment on such proposed regulations;*” it “*shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate;*” and it “*shall, at least every 8 years, review and, if appropriate, revise such standards* following the procedure required by this subsection for promulgation of such standards.” 42 U.S.C. § 7411(b)(1)(A)-(B). The statute is thus devoid of any reference to “discretionary” standards.

The Administrator’s distinction between “mandatory” and “discretionary” performance standards would also create an absurd policy outcome. Under this interpretation, the *first* pollutant or point source that EPA regulates for a given source category is subject to section 111(b)(1)(B)’s rigid requirements for review and revision at least once every eight years, while any *subsequent* pollutant or point source can be regulated, reviewed, and revised according to a schedule that EPA chooses at its own discretion and with no recourse to the prescriptive language of section 111(b)(1)(B), no matter how dangerous the subsequent pollutant (or how heavily emitting the point source) may be than those covered in the initial regulation. This cannot be—and is not—the scheme Congress had in mind when it enacted section 111(b) and required EPA to regularly review and revise standards. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.”).

¹¹ Notably, the legal term “standard of performance” is defined under section 111(a) to mean “a standard for emissions of air *pollutants*” in the plural, 42 U.S.C. § 7411(a) indicating that such standards are not intended to cover a single, static pollutant but to encompass emissions for multiple pollutants, including any that EPA may subsequently add.

GPA Midstream argues that, under section 111(b)(1)(B), EPA’s 2016 Rule is neither mandatory nor discretionary, but was impermissible because EPA did not make a specific finding that methane emissions from the oil and gas industry endanger public health and welfare. GPA Midstream Association Comments at 8. Specifically, GPA argued that section 111(f) obligated EPA to consider for each source category “the extent to which each such pollutant [emitted by that source category] may reasonably be anticipated to endanger public health or welfare,” *id.* (citing 42 U.S.C. §§ 7411(f)(2)(B) (emphasis added)), and that the agency was limited to issue performances standards only for those pollutants it individually assessed. This argument misrepresents the purpose, language, and applicability of section 111(f), which was added as part of the 1990 Clean Air Act amendments to force EPA to issue standards for listed source categories that had languished unregulated for years. The only source categories covered under section 111(f) were those that had been listed under section 111(b)(1)(A) before November 15, 1990, but for which regulations had not yet been proposed by that same date—a category that decidedly excludes the oil and gas sector, which was first listed in 1979 and first regulated in 1985. Furthermore, the criteria listed in section 111(f)(2)—including “the extent to which each such pollutant [emitted by a source category] may reasonably be anticipated to endanger public health or welfare”—served only to allow EPA to “determin[e] priorities for promulgating standards for categories of major stationary sources” covered under section 111(f). *Id.* § 7411(f)(2) (emphasis added). GPA’s argument that this provision somehow bars EPA from regulating any source category for a given pollutant unless it has made an endangerment finding for that source category’s emissions of that specific pollutant is simply incoherent. Moreover, not only was the NSPS permissible, given the substantial amounts of methane emitted by the oil and gas sector, 81 Fed. Reg. at 35,830, 35,838, 35,843, the dangers that methane poses to human health and welfare, 74 Fed. Reg. 66,496 (Dec. 15, 2009), and the achievability and low cost of controlling methane emissions from the sector, EPA was required to issue the NSPS. Any contention that the NSPS was not mandatory is simply incorrect.

EPA’s new interpretation makes no sense in light of the purpose of the statute (to reduce harmful air pollution) and the structure of Section 111 (an orderly process of first listing a source category, issuance of the NSPS, and then regular updates, based on updated information about the source category’s emissions and approaches to reduce those emissions).

C. The Administrator does not have authority to stay the NSPS pending reconsideration under the Administrative Procedure Act.

As we explained in our earlier comments, there are at least three reasons the Administrative Procedure Act’s (“APA”) stay pending judicial review provisions do not grant EPA authority to stay the already-effective NSPS while it administratively reconsiders them. *See* 5 U.S.C. § 705 (“[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.”). EPA solicits feedback on a commenter’s argument that section 705 “provide[s] the EPA authority to stay [the 2016 Rule] pending judicial review,” since “the term ‘postpone’ in section 705. . . include[s] ‘delay, defer, adjourn, shelve, table, and put on hold.’” 82 Fed. Reg. at 51,789. The D.C. Circuit, however, has already rejected that argument. *See Safety-Kleen Corp. v. EPA*, 1996 U.S. App. LEXIS, at *2-3 (D.C. Cir. Jan. 19, 1996) (Section 705 “permits an agency to postpone the effective date of a not yet effective rule, pending judicial review. It *does not* permit an agency to suspend without notice and comment a

promulgated rule. . . .”). More recently, the Northern District of California has also squarely rejected the notion that section 705 allows an agency to stay already-effective rules. *Becerra v. U.S. Dep’t of Interior*, No. 17-CV-02376-EDL, 2017 WL 3891678, at *9-10 (N.D. Cal. Aug. 30, 2017); *California v. United States Bureau of Land Mgmt.*, No. 17-CV-03804-EDL, 2017 WL 4416409, at *7-9 (N.D. Cal. Oct. 4, 2017).¹²

Such an interpretation would also conflict with Congress’s intent to authorize agencies to “maintain the status quo” under certain circumstances. H. Rep. No. 1980, at 277 (1946); S. Rep. No. 752, at 213 (1945). Here, the status quo changed long ago when the 2016 Rule became effective in August 2016 and even all of the relevant compliance deadlines are now long passed. The term “postpone” cannot be read in a vacuum, but must be read in the context of the purposes of section 705. *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989) (“statutory language cannot be construed in a vacuum [but rather] must be read in their context and with a view to their place in the overall statutory scheme”)

III. The Administrator’s Alternative Compliance Revision is Unlawful, Arbitrary and Capricious, and Violates the Procedural Requirements of the Clean Air Act.

In this supplemental notice, the Administrator proposes to reimagine his action as a substantive amendment of the NSPS that would extend compliance deadlines, rather than (as initially conceived) a stay pending reconsideration. This reframing of the stay does not render it any more lawful.

A. The Administrator’s alternative compliance revision is unlawful under section 111.

In the supplemental notices, EPA states that it “is using the same statutory authority and following the same procedures in the present rulemaking to amend the 2016 Rule,” 82 Fed. Reg. at 51,789, but EPA completely fails to explain how an extension of time to comply with specific NSPS requirements (for fugitive emissions, well site pneumatic pumps, and certification of closed vent systems by a professional engineer) is consistent with section 111’s substantive requirement that standards reflect “best system of emissions reduction” (“BSER”),¹³ or its procedural requirements. *See* 42 U.S.C. § 7411(b), (h). Nor has it presented any factual findings or evidentiary basis for such a revision.

¹² Even if we accept the Bureau of Land Management’s erroneous emphasis on compliance deadlines as set forth in the *Becerra* case, all EPA’s relevant compliance deadlines here have passed.

¹³ The provisions of the NSPS that EPA now seeks to delay include both standards of performance, promulgated under section 111(b) and work practice standards, promulgated under section 111(h). Because there are no relevant differences between the two types of standards here, we refer to both as BSER standards. *See* 42 U.S.C. § 7411(h)(5) (“Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter.”).

Indeed, as explained further *infra* § IV, the available data demonstrate that there is no need for an extension and that an extension would not be the BSER. State-level and voluntary corporate policies—while far from the uniform protection section 111 mandates and the NSPS provides—show that the oil and gas industry can meet the standards EPA now proposes to delay. For example, Colorado, a major oil and gas producing state, has required frequent LDAR at new and existing facilities since 2014, and the state Air Quality Control Commission recently strengthened regulations to increase the frequency of LDAR requirements for oil and natural gas wells in ozone nonattainment areas, and to require LDAR for pneumatic controllers.¹⁴ And in September 2017, ExxonMobil announced a voluntary program to reduce methane emissions from its domestic operations, including conducting LDAR at production and midstream facilities across the United States.¹⁵ Although state and voluntary corporate programs are not a sufficient substitute for EPA’s mandatory national standards, they demonstrate that the NSPS’s requirements are fully implementable and can be achieved now. As such, there is no basis to conclude that the NSPS does not reflect the BSER.

In order to revise the NSPS, EPA must follow the substantive and procedural requirements of sections 111 and 307(d). An extension of a compliance deadline constitutes a substantive revision of a regulation. *See Council of S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 580 (D.C. Cir. 1981) (“[T]he December 5 order was a substantive rule since, by deferring the requirements that coal operators supply life-saving equipment to miners, it had ‘palpable effects’ upon the regulated industry and the public in general.”); *id.* at 582 n. 40 (“[T]he December 5 order ... was an amendment to a mandatory safety standard.”).¹⁶ Accordingly, EPA must justify the revision as being consistent with its statutory mandate, reasonably explain the basis for the revision grounded in the record before the agency, and follow the procedures established by section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), for revising a new source performance standard.

Section 111 sets forth clear substantive and procedural requirements for revising a standard. EPA’s revision of a standard must follow “the procedures required by this subsection

¹⁴ Colorado Oil & Gas Association and Environmental Defense Fund – Joint Statement on Air Quality Control Commission Vote on New Air Regulations (November 16, 2017), <https://www.edf.org/media/colorado-oil-gas-association-and-environmental-defense-fund-joint-statement-air-quality>.

¹⁵ ExxonMobil Expands Methane Emissions Reductions Program (September 25, 2017), <http://news.exxonmobil.com/press-release/exxonmobil-expands-methane-emissions-reduction-program>.

¹⁶ In particular, for purposes of enforcing the Clean Air Act, an “emission standard” is defined to include the “schedule or timetable of compliance” that EPA incorporates into the Rule, 42 U.S.C. § 7604(f)(1)—which is, in turn, defined to mean the “schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.” *Id.* § 7602(p); *see NRDC v. EPA*, 683 F.2d 752, 761-62 (3d Cir. 1982) (“[W]ithout an effective date a rule would be a nullity because it would never require adherence.”).

for promulgation of such standards.” 42 U.S.C. § 7411(b)(1)(B). Accordingly, EPA must issue a proposal and “afford interested persons an opportunity for written comment on such proposed” revision. *Id.*

The term “standard of performance” is defined as:

a standard for emissions of air pollutants which reflects the degree of emissions limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonairquality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Id. § 7411(a). Likewise, section 7411(h) provides that:

For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment

Id. § 7411(h)(1).

When EPA issues or revises a performance standard under section 111, the statute’s procedural requirements necessitate a thorough review of section 111’s substantive factors, including whether, and by what date, the standards are “achievable” through a “system of emission reduction,” whether that system is the “best” that EPA has determined to be “adequately demonstrated,” the “cost” of those standards, any resulting “nonair quality health and environmental impacts,” “energy requirements,” the “amount of air pollution reduced” by the standards, and how the standard may drive “technological innovation.” 80 Fed. Reg. 64,510, 64,538 (Oct. 23, 2015) (quoting *Sierra Club v. Costle*, 657 F.2d 298, 326, 347 (D.C. Cir. 1981)); *see also* 42 U.S.C. § 7411(a)(1), (b)(1)(B), (h)(1). A change in the NSPS’s compliance deadlines requires a factual record and explanation showing how EPA assessed and applied these statutory criteria to the facts to derive those deadlines.

Accordingly, a proposal to revise a compliance deadline for a section 111 standard must contain a factual analysis showing that the revised deadlines reflect the degree of emissions limitation achievable through the application of the BSER based on the aforementioned statutory factors. A proposal to delay the date of compliance is manifestly inconsistent with the statute without any factual record and explanation showing its reasonableness, necessity, and conformity with the statutory BSER standard.

In addition, section 111 manifests Congress's desires that new source performance standards be technology forcing. The legislative history of section 111(b) clearly demonstrates that Congress intended new source performance standards to reflect the most highly-effective emission reduction systems that are technically and economically feasible, including new and innovative pollution control technologies that are not in routine use. The Senate Committee Report issued prior to passage of the Clean Air Act in 1970 stated that "[s]tandards of performance should provide an incentive for industries to work toward constant improvement in techniques for preventing and controlling emissions from stationary sources." S. Rep. No. 91-1196, at 17 (1970). The same report noted that new source performance standards should reflect "the degree of emission control that has been or can be achieved through the application [of] technology which is available or normally can be made available. This does not mean that the technology must be in actual, routine use somewhere." S. Rep. No. 91-1196, at 16 (1970); *id.* at 17 ("Standards of performance should provide an incentive for industries to work toward constant improvement in techniques for preventing and controlling emissions from stationary sources . . ."). In 1977, Congress amended select Clean Air Act provisions based on concern that the statute was encouraging a "race to the bottom": individual states were relaxing pollution control standards to lure industry from states with more stringent requirements, thus gaining a competitive advantage over their more environmentally-conscious neighbors. See H.R. Rep. No. 95-294, at 184 (1977). To counteract this trend and "create incentives for improved technology," Congress amended section 111 so as to mandate the adoption of the "best technological system of continuous emissions reduction." 42 U.S.C. § 7411(a) (1977); Clean Air Act Conference Report: Statement of Intent; Clarification of Select Provisions, 123 Cong. Rec. 27071 (1977). The 1977 Senate Report discusses the need "to assure the use of available technology and to stimulate the development of new technology." S. Rep. No. 95-127 at 171; *see also* H.R. Rep. No. 95-294, at 186 (1977) (noting that one of the purposes of new source performance standards is to create an incentive for technological innovation by providing a "guaranteed market" for new control technology).

To that end, "[t]he statutory factors which EPA must weigh [when setting performance standards] are broadly defined and include within their ambit subfactors such as technological innovation." *Costle*, 657 F.2d at 346. The agency may thus promulgate standards that reflect "improved design and operational advances" that industry has yet to realize, "so long as there is substantial evidence that such improvements are feasible and will produce the improved performance necessary to meet the standard." *Id.* at 364; *see also Portland Cement Ass'n v. EPA*, 665 F.3d 177, 190 (D.C. Cir. 2011) (EPA properly based the NSPS for new cement kilns on a recent and more efficient model, even though many older kilns still existed that did not utilize the same technology). Moreover, EPA can "extrapolat[e] . . . a technology's performance in other industries", and look beyond domestic facilities to those used abroad. *Lignite Energy Council v. EPA*, 198 F.3d 930, 934 n.3 (D.C. Cir. 1999).

A plain reading of the language of the statute itself confirms its technology-forcing nature. In addition to mandating the adoption of the "best system of emissions reduction," section 111 requires that when the governor of a state brings to the attention of the agency "a new, innovative, or improved technology or process," which shows that the standards in effect "no longer reflect[] the greatest degree of emission limitation achievable," EPA must "revise

such standard of performance ... accordingly.” 42 U.S.C. § 7411(g)(4). And “when revising standards promulgated under this section, [the Administrator shall] ... consider the emission limitations and percent reductions achieved in practice.” *Id.* § 7411(b)(1)(B). Under these mandates, EPA’s determination as to whether new phase in periods are warranted and permissible under section 111 must take into account the ever-increasing evidence suggesting any revision to the standards would have to *increase* stringency to be the BSER.

The Administrator has not met these substantive requirements for rule revisions under section 111. As the discussion below demonstrates, he has not shown that new deadlines would satisfy the BSER, and has offered no valid evidence for departing from the NSPS’s carefully constructed policies and timelines.

As we explained in our earlier comments, Environmental Comments at 16, and discuss in more detail below, in the 2016 Rule, EPA explained at length why the requirements it imposed and their associated compliance deadlines were the BSER. The Administrator now suggests that he is considering a substantive amendment to the NSPS, but without giving any concrete information casting doubt on the current BSER or explaining how its proposed new standard is consistent with section 111’s requirements.

With regard to each of the NSPS provisions that the Administrator now proposes to amend, he either ignores section 111’s substantive factors entirely (such as the health effects resulting from increased pollution, or the statute’s technology-forcing mandate), relies on factors that are either irrelevant or insufficient to justify the proposed amendments (such as his desire to reconsider aspects of the NSPS to purportedly make them more clear), or appeals only to particular substantive factors that he wishes to reconsider (such as the cost¹⁷ or achievability of the standards) through vague references to stakeholder “suggestions” and “feedback,” without any supporting facts or analysis.

Specifically, with respect to its primary rationale for the changing the deadlines—that operators are having difficulty complying with the NSPS—the Administrator points only to vague allegations that it has received “feedback” from unnamed “stakeholders” indicating that some “stakeholders” are encountering “difficulties” implementing the NSPS. The Administrator provides no citation to any actual evidence or data, or even attribution.¹⁸ The Administrator does

¹⁷ For example, with respect to its rationale for staying or delaying the PE certification requirement for closed vent systems on cost grounds that it would be “clearly consistent with section 111 of the CAA, which expressly identifies cost as a factor for consideration when promulgating emission standards.” 82 Fed. Reg. at 51,791 (citing 42 U.S.C. § 7411(A)(1)). But while cost is one consideration that EPA may take into account when it undergoes a revision, it is far from the only factor EPA must consider and, more fundamentally, EPA has not yet considered it. EPA cannot stay or delay a final rule simply because it desires to reconsider a relevant factor. *See* Environmental Comments 6-22.

¹⁸ *See, e.g.*, 82 Fed. Reg. at 51,792 (asserting, without any citation or supporting evidence, that “[s]ome stakeholders suggested that some sources continue to have difficulty securing the necessary equipment and/or personnel to conduct the required monitoring survey of fugitive

not disclose who these stakeholders are or what form these communications took, much less provide such information in the docket for public comment. Notably, *none* of the industry comments that the Administrator cites to in the supplemental notices—all of which were made to EPA *after* the relevant compliance deadlines—suggest that there is an inadequate supply of necessary equipment or personnel to comply with the NSPS. There is also no evidence in the docket that EPA has communicated with any of the companies that actually provide LDAR services or professional engineering services to determine whether there is any shortage in availability and, if so, the timeline needed to ramp up. Nor, as discussed in more detail below, *infra* 20-21, has the Administrator even mentioned, much less considered or made them available for public inspection and comment, the directly relevant data contained in operators’ annual compliance reports.

The Administrator cannot *substantively amend* the NSPS by entirely ignoring some factors that the agency is required to assess under section 111 and basing its analysis of other factors upon such flimsy and unsupported allegations that do not come close to supporting the notion that a 2-year deadline extension is the BSER. Rather, the Administrator needs to demonstrate how any amendment of the NSPS, including one to extend compliance deadlines, is itself the BSER. Here, the Administrator’s proposal does not provide any cogent explanation, much less factual support, for such a finding.¹⁹

Nor has the Administrator even acknowledged his statutory duty, when revising an NSPS, to “consider the emission limitations and percent reductions achieved in practice.” 42 U.S.C. § 7411(b)(1)(B). EPA has apparently not considered the annual reports that are in its possession documenting what operators are achieving in practice. And EPA does not even mention the fact that states like Colorado, or by companies like Exxon/XTO, have shown that the kind of provisions that the Administrator is attempting to delay are fully capable of being implemented *now*. As explained above, and as this requirement makes clear, in revising the NSPS, EPA cannot look to the lowest common denominator, but instead must be focused on what the leaders are achieving.

emissions); *id.* (asserting, without any citation or supporting evidence, that “some stakeholders suggested that the time provided in the 2016 Rule may not have been adequate to accommodate the number of affected sources subject to these requirements”); *id.* (asserting, without any citation or supporting evidence, that “[s]ome stakeholders suggested that the challenges regarding acquiring necessary equipment and trained personnel may also exist with respect to the requirement of certification of closed vent systems by a professional engineer”).

¹⁹ As discussed in more detail, *infra* 21-22, when EPA in 2013 amended the NSPS to extend compliance deadlines for storage vessels, it explicitly found—on a robust record that included extensive outreach to control technology suppliers and a transparent presentation of supporting data and EPA’s analytical methodology—that the earlier NSPS did not “accurately represent[] the BSER for these affected facilities,” 78 Fed. Reg. at 58,424, and proposed a slight extension of the compliance deadline as “reflecting BSER.” 78 Fed. Reg. at 22,131.

B. The Administrator’s alternative compliance revision is unlawful under section 307(d).

The Clean Air Act “requires a much more detailed notice of proposed rulemaking than does the APA.” *Union Oil Co. of Cal. v. EPA*, 821 F.2d 678, 682 (D.C. Cir. 1987). EPA must include in its proposal a “statement of basis and purpose” that “shall include a summary of—(A) the factual data on which the proposed rule is based; (B) the methodology used in obtaining the data and in analyzing the data; and (C) the major legal interpretations and policy considerations underlying the proposed rule.” 42 U.S.C. § 7607(d)(3). In addition, “[a]ll data, information, and documents referred to in [§ 7607(d)(3)] on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule,” *id.*, and “[t]he promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.” *Id.* § 7607(d)(7). “[T]he additional notice requirements in § 307(d)(3) suggest that Congress intended agency notice under the Clean Air Act to be more, not less, extensive than under the APA.” *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 550 (D.C. Cir. 1983) (“*Small Refiner*”); *see also id.* at 518-19 (“Clean Air Act § 307(d)(3) requires EPA to give a detailed explanation of its reasoning at the ‘proposed rule’ stage”). EPA’s original proposed rules and more recent supplemental notices fail these requirements.

The purposes of requiring notice of any proposed standard have been described by the courts:

First, notice improves the quality of agency rulemaking by ensuring that agency regulations will be “tested by exposure to diverse public comment.” ... Second, notice and the opportunity to be heard are an essential component of “fairness to affected parties.” ... Third, by giving affected parties an opportunity to develop evidence in the record to support their objections to a rule, notice enhances the quality of judicial review....

NRDC v. Thomas, 805 F.2d 410, 437 (D.C. Cir. 1986). These “thorough and careful procedural safeguards ... insure an effective opportunity for public participation in the rulemaking process,” *Costle*, 657 F.2d at 398-99, and the “specific” proposal serves as the “focus for comments,” *Small Refiner*, 705 F.2d at 548-49; *see also Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (agency must “make its views known . . . in a concrete and focused form so as to make criticism or formulation of alternatives possible”).

As we explained in our earlier comments, the Administrator’s original proposed rule failed this requirement by not disclosing “the major legal interpretations” underlying the proposed rule—specifically, EPA’s legal authority to promulgate it. The supplemental notices likewise violate section 307(d)’s requirements and ensure that public comment will not be meaningful. EPA did not present the public with *any* of the factual data upon which its new regulatory proposal is based (if such facts exist), nor the methodology it used in obtaining and analyzing that data (if such analysis actually occurred). Indeed, while characterized as “notices of data availability,” the supplemental notices do not make *any* data available. Instead, as discussed above, *supra* 20-24, they merely allege—without any supporting data or evidence, or

even attribution—that, for example, “some stakeholders suggested that some sources continue to have difficulty securing the necessary equipment and/or personnel to conduct the required monitoring survey of fugitive emissions,” 82 Fed. Reg. at 51,792, and that “[a]ccording to the feedback received, the immediate high demand for qualified professional engineers to meet this certification requirement has made implementation of this requirement quite challenging,” *id.* at 51,789.

This “feedback” and these “suggestions” appear nowhere in the docket. In fact, *no* data at all is made available through the supplemental notices or in the docket regarding who these “stakeholders” are, which “sources” EPA is referring to, and what kinds of “difficulty” those unnamed “stakeholders” and “sources” are facing. Not one concrete example is presented, much less actual data to suggest that any such “difficulties” are pervasive. Notably, *none* of the earlier industry comments that EPA cites in other portions of its supplemental notices allege compliance difficulties related to the availability of equipment or personnel to comply with the fugitive emissions provisions or any other requirement of the NSPS, notwithstanding the fact that those comments were filed *after* the compliance deadlines had passed. If EPA received “feedback” or “suggestions” from “stakeholders” upon which it bases this proposal, it must make that feedback available to the public to comment on. *See Costle*, 657 F.2d at 398 (“If, however, documents of central importance upon which EPA intended to rely had been entered on the docket too late for any meaningful public comment prior to promulgation, then both the structure and spirit of section 307 would have been violated.”); *Conn. Light & Power Co. v. Nuclear Regulatory Comm’n*, 673 F.2d 525, 530-31 (D.C. Cir. 1981) (“An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.”). This is especially egregious given the existence of a large body of relevant data—within the agency’s possession—in the form of operators’ October 31 annual compliance reports, which the agency has neither analyzed nor publicly disclosed to allow for commenters’ own analysis.

Commenters are therefore left completely in the dark as to the factual basis for the Administrator’s proposed amendment. *See Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 949 (D.C. Cir. 2004) (“Without a readily accessible statement of the agency’s rationale, interested parties cannot comment meaningfully during the rulemaking process. Nor can they, or the courts, determine whether the agency has acted capriciously or whether its statutory interpretation is reasonable under *Chevron’s* second step.”); *Kennecott Corp. v. EPA*, 684 F.2d 1007, 1018-19 (D.C. Cir. 1982) (holding that if an argument is factually based, the facts and analyses underling it must be included in the docket). This is a far cry from providing commenters with “the factual data on which the proposed rule is based,” and “the methodology used in obtaining ... and analyzing the data.” 42 U.S.C. § 7607(d)(3).

The Administrator cannot, under section 307(d), make a proposal and simultaneously solicit data to support that proposal only through comments, and then finalize that proposal without seeking additional comment as it appears to be doing here. *See* 82 Fed. Reg. at 51,789 (“Specifically, the EPA is soliciting relevant data and information, in particular those related to the EPA’s analyses and assumptions that were used to establish the phase-in periods of the 2016 Rule, to help inform the EPA why the appropriate duration of these periods may have been underestimated....”). That would deprive the public of the opportunity to comment on the data

that section 307(d)(3) requires EPA to supply at the time of the proposal. Here, instead of presenting the public with the factual data upon which the proposed amendment is based, EPA is engaging in a fishing expedition to gather data to support its preferred and predetermined result—delaying the NSPS requirements for years. The proper order under the Act is to gather the data that allegedly supports the rule *first* and then make that data available for comment through a proposal. Here, to the extent the Administrator gathered or gathers any data at all to support its preferred policy outcome, it does not appear that the public will ever be allowed to comment on that data, undermining the entire purpose of notice and comment. *See Small Refiner*, 705 F.2d at 549-50 (“EPA must *itself* provide notice of a regulatory proposal. Having failed to do so, it cannot bootstrap notice from a comment.”); *see Costle*, 657 F.2d at 398 (public must be able to meaningfully comment on factual underpinnings of rule).

The Administrator’s supplemental notices here look very different from the agency’s 2013 proposal to extend compliance deadlines for storage vessels, which none of the Joint Environmental Commenters opposed. In its 2012 NSPS, EPA promulgated standards of performance for storage vessels with a compliance deadline of October 15, 2013. After promulgation, however, EPA learned through “information presented” in petitions for reconsideration that the “[i]nformation the EPA had during development of the final rule led to an underestimation of the number of affected storage vessels.” 78 Fed. Reg. at 22,128. EPA specifically explained the data and methodologies underlying its earlier prediction. *Id.* at 22,130 (“We drew estimates and predictions of the number of completed wells from 2011 to 2015 from the EIA NEMS forecasting model,” and “[t]o estimate the number of storage vessels ... we used well-level production information from 2009 contained in the HPDI database” and “analyzed the regulations in the 11 states that represented 95 percent of the total production.”). After promulgation, however, EPA received specific information suggesting that the number of affected storage vessels would be much higher. *Id.* EPA then did an analysis of how quickly “the control technology industry will be able to ramp up production.” *Id.* It made its data, methodology, and communications with control technology manufacturers public, and specifically explained its reasons for concluding that more time was needed to allow for the ramp up. *Id.*; *see* Dkt. No. EPA-HQ-OAR-2010-0505-4637 (Aug. 1, 2013) (Combuster Supply and Demand Analysis). All the while, EPA kept in mind the Act’s overriding purpose, explaining that “[w]e are concerned about delaying control of all storage vessels affected facilities,” and “in an attempt to match supply and demand in the most efficient and environmentally protective manner,” considered a phased approach that would target control of “the vessels expected to have the most significant emissions” first. *Id.* a 22,131.

The Administrator’s current supplemental notices contrast sharply with this past precedent. They provide *no* information, *no* methodology, and reflect no commitment to controlling sources of dangerous pollution in the quickest manner possible. These shortcomings amount to a clear violation of both the letter and spirit of the Clean Air Act’s procedural requirements. But to top it off, when EPA published its “notice of data availability” on November 8, alleging without evidence that certain “stakeholders” “suggested” compliance difficulties at some sources, the Administrator did not make public the very annual reports that would provide relevant facts, which were due to be filed with the agency on October 31. Indeed, the notice does not mention this information—its existence, potential relevance, or factual content—at all.

The NSPS requires regulated companies to submit these annual reports, with the initial reports due no later than 90 days after the end of the first compliance period, which ended on July 31, 2017. 82 Fed. Reg. at 35,846. The annual reports “include information on all affected facilities that were constructed, modified or reconstructed during the previous year,” including, for example, with respect to fugitive emissions:

the date and time of the surveys completed during the reporting year, the name of the operator performing the survey; the ambient temperature, sky conditions, and maximum wind during the survey; the type of monitoring instrument used; the number and type of components that were found to have fugitive emissions; the number and type of components that were not repaired during the monitoring survey; the number and type of difficult- to-monitor and unsafe-to-monitor components that were monitored; the date of the successful repair of the fugitive emissions component if it was not repaired during the survey; the number and type of fugitive emission components that were placed on delay of repair and the explanation of why the component could not be repaired and was placed on delay of repair; and the type of monitoring instrument used to resurvey a repaired component that could not be repaired during the initial monitoring survey...

Id. All of this information—which was in EPA’s possession at the time it issued the supplemental notices—is directly relevant to the agency’s new theory that operators are having difficulty complying with the NSPS. Yet, instead of making this information public and presenting the factual data that regulated entities submitted, EPA has decided instead to issue what is, effectively, a “notice of *no* data availability,” and to base its renewed proposal on unnamed “stakeholders” and unexplained compliance “difficulties.” It is arbitrary and capricious not to take this available data into account in promulgating an NSPS revision, and a failure to make this information available for public comment renders it impossible for interested parties to provide meaningful comments on whether an extension of compliance deadlines is necessary.

Notably, in the 2016 Rule, EPA did intend to make this information available to the public 30 days after submission. *Id.* at 35,853 (“This information must be included in the annual report made available to the public 30 days after submission...”). EPA suggested that the purpose of making these data available was “to expand transparency” and to improve the rulemaking process for future revisions of the NSPS. *Id.* at 35,869-70. EPA also established a separate mechanism for submitting confidential business information. *Id.* at 35,928. Soon after the Administrator published its supplemental notices in the Federal Register, Joint Environmental Commenters requested that EPA fulfill its promise to make these data publicly available and *then* give commenters a reasonable time thereafter to comment on EPA’s new proposal. The Administrator provided no response.

“Without a readily accessible statement of the agency’s rationale,” including the facts underpinning that rationale,” interested parties cannot comment meaningfully during the rulemaking process. *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 949 (D.C. Cir. 2004). Here, instead of being able to focus their comments on actual facts, methodologies, and concrete examples, commenters are left to guess at what these “stakeholders” may or may have not

“suggested” to the Administrator. *See Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005) (finding a notice violation where commenters “would have had to divine the agency’s unspoken thoughts”). These supplemental notices thus violate section 307(d)’s procedural requirements, and rule finalizing EPA’s proposals would be unlawful.

C. The Administrator’s alternative compliance revision is not authorized by section 301(a).

Nor is the Administrator’s alternative compliance revision authorized by section 301(a). Sections 111(b)(1)(B) and section 307(d) already include precise substantive and procedural instructions to EPA for amending a new source performance standard, so the use of section 301(a) to achieve the same end is “neither necessary nor appropriate to carry out EPA’s functions under the Act.” *Costle*, 636 F.2d at 403. As explained in detail above, *infra* 7-14, section 301 does not provide the Administrator *carte blanche* authority to do anything he likes, but is limited to those rules that are necessary and appropriate to achieve the purposes of the Act. If EPA could use section 301(a) to change the NSPS’s compliance deadlines, there would be no limiting principle for that provision’s application, and EPA could regularly undertake substantive revisions of rules issued under section 111 in a manner that does not comply with the Act’s specific substantive and procedural requirements—an interpretation that is contrary to the statutory text and case law. *See Reilly*, 976 F.2d at 40-41. Moreover, section 301’s broad language does not override the more specific language contained in sections 111(b)(1)(B) and 307(d). *See e.g., Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957) (“However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment.”).

D. The Administrator’s alternative compliance revision is arbitrary and capricious and betrays that EPA predetermined the outcome of this rulemaking.

As we discuss above, EPA’s newly-proposed revision to the compliance deadlines (styled as a “phase-in”) is inconsistent with section 111 and so unlawful on that basis alone. But this new rationale fails for other reasons that make clear it is simply a predetermined end-goal in search of both a justificatory legal theory and some semblance of factual support. For instance, EPA suggests that a compliance revision is necessary to allow operators to make investments needed to comply with certain of the standards. 82 Fed. Reg. 51,792. While EPA has, in the past, phased in certain requirements in order to allow operators the necessary time to ramp up equipment and personnel, the “phase-in” rationale simply does not match the circumstances here, where the record is devoid of any data or analysis supporting the agency’s rationale for the compliance revision and where operators have already been complying with LDAR provisions for at least six months and pneumatic pump requirements for over a year. 81 Fed. Reg. 35,824.

EPA’s “phase-in” rationale is flawed for other reasons. Indeed, the agency suggests that either or both of its characterizations of its proposed action—a stay of the rule’s requirements and revision of the rule’s compliance deadlines—are legally justifiable. But these two theories conflict. One theory is “operators shouldn’t comply now because we will likely repeal or change the standard in the future.” The other is “operators should proceed with (but have more time for)

with compliance because we will confirm the standard in the future.” While the functional outcomes associated with both are similar, the rationales supporting each—and what they suggest that stakeholders do in the interim period—are in direct conflict. EPA originally proposed to stay the standards on the theory that sources should not need to make investments to comply with standards that the agency was likely to change. 82 Fed. Reg. at 27,645. The revision to the compliance deadlines, however, is premised on the fact that sources will have to comply with these very same requirements, but need more time to make the investments necessary to do so. Even in the supplemental notices themselves there are strong tensions in how the agency describes these two approaches. *Compare* 82 Fed. Reg. at 51,791 (stay is necessary to prevent sources from “incur[ring] significant and potentially unnecessary additional costs”) *with id.* at 51,792 (suggesting, based on stakeholder feedback, that additional phase-in time may be needed to hire trained personnel and purchase equipment). It makes no sense to suggest that EPA’s action will allow industry to avoid the same expenditures that it is simultaneously allowing industry to make over a longer period. And one theory directs suppliers of leak detection and repair equipment and services to scale back, while the other directs them to ramp up. It is quintessentially arbitrary and capricious for the agency to rely on both of these rationales to support its proposal.

These features are also evidence that EPA seeks to achieve the same end it proposed in the stay proposals by recasting its action as a substantive revision in an attempted end run around the Act’s limitations on stays pending reconsideration. But EPA’s action is a result in search of a legal theory and, regardless of how it is styled, should be rejected for what it is: an unlawful effort to suspend duly promulgated standards pending reconsideration. Indeed, “it is the substance of what the [agency] has purported to do and has done”—*not* how the agency has “labeled it”—“which is decisive.” *EDF v. Gorsuch*, 713 F.2d 802, 816 (D.C. Cir. 1983); *see Pub. Citizen v. Steed*, 733 F.2d 93, 98 (D.C. Cir. 1984) (citing *EDF* and rejecting NHTSA’s characterization of its action as a “temporary suspension” and instead concluding that it “should be treated as a revocation”); *NRDC*, 683 F.2d at 763 n.23 (“We must look at the character of the action taken at the time it is taken.”).

These features are arbitrary when considered in isolation, but are also evidence that EPA has a predetermined outcome in mind—to remove near term compliance obligations for sources to give the agency time to permanently rescind the standards—and now seeks to achieve that end by recasting its action as a substantive revision, thereby undermining the opportunity for meaningful comment.

The purpose of the Administrative Procedure Act’s public comment requirements is “to see to it that the agency maintains a flexible and open-minded attitude towards its own rules.” *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317, 1325 (D.C. Cir. 1988) (quoting *Nat’l Tour Brokers Ass’n v. United States*, 591 F.2d 896, 902 (D.C. Cir. 1978)). In order to comply with the Administrative Procedure Act and ensure a “meaningful opportunity” for public comment, the agency must “remain sufficiently open-minded” throughout the rulemaking process. *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1101 (D.C. Cir. 2009); *Prometheus Radio Project v. FCC*, 652 F.3d 431, 453 (D.C. Cir. 2011); *see also Ass’n of Nat’l Advertisers v. FTC*, 627 F.2d 1151, 1170 (D.C. Cir. 1979). It is well established that an agency decisionmaker should be disqualified from participating in a regulatory decision where he or she has displayed

an “unalterably closed mind on matters critical to the disposition of the proceeding.” *C & W Fish Co. v. Fox*, 931 F.2d 1556, 1565 (D.C. Cir. 1991). An agency official must often “engage in debate and discussion about the policy matters before him.” *Id.* at 1569. However, when “clear and convincing” evidence reveals that a decisionmaker has a closed mind on matters critical to the disposition of the proceeding, *id.*, courts have intervened to set aside such decisions. *See e.g., Nehemiah Corp. of America v. Jackson*, 546 F. Supp. 2d 830, 847-48 (E.D. Cal. 2008) (disqualifying the HUD Secretary from a decision after he made statements in the press indicating his preferred outcome).

The Administrator’s actions throughout this rulemaking process and leading up to it show that he does not have an open mind, but rather has had one goal only: to suspend and delay the requirements that operators comply with the NSPS standards regardless of whether there is legal authority or record support for taking such a step. Administrator Pruitt has consistently and doggedly sought to remove oil and gas operators’ compliance obligations, using any means available, regardless of the legality or underlying factual circumstances. When the Administrator first attempted to suspend these standards for 90 days, he provided industry with a nearly 45-day forewarning. Letter from Scott Pruitt, EPA Administrator, to Howard Feldman, American Petroleum Institute, et al., Re: Convening a Proceeding for Reconsideration of Final Rule, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed and Modified Sources, Published June 3, 2016, 81 Fed. Reg. 35,824”, EPA-HQOAR-2010-0505-10792. When the D.C. Circuit struck that suspension down as unlawful, the Administrator, under the guise of needing to evaluate litigation options he never ultimately pursued, sought to retain the effect of that unlawful action by requesting an extended recall of the mandate. Mot. to Recall Mandate, *Clean Air Council v. EPA*, No. 17-1145, ECF Doc. 1683079 (D.C. Cir. July 7, 2017). And when the full D.C. Circuit, sitting *en banc*, rejected that maneuver, ensuring the standards would remain in place, the Administrator nonetheless assured companies that enforcement of the provisions would occur only on a “case-by-case” basis. *See e.g.* Ellen Gilmer, *With Obama EPA rule in force, compliance clash may loom*, E&E News, (Aug. 22, 2017) <https://www.eenews.net/stories/1060059016>.

The Administrator also proposed both 3-month and 2-year stays, the shorter for the express (and now irrelevant) purpose of providing a bridge between the initial and longer stays such that sources would never face compliance obligations. The supplemental notices at issue in these comments are perhaps the strongest evidence of this predetermination. The supplemental notices quite transparently lay out EPA’s predetermined outcome and then request that commenters provide a statutory basis and facts to support that outcome. In putting forward the supplemental notices, Administrator Pruitt demonstrates his results-oriented approach by (a) offering new justifications for the stays based on facts such as operator compliance difficulties, without presenting any actual evidence, (b) proposing a new legal rationale to justify EPA’s desired suspension of the requirements as revised “phase-ins” completely at odds with EPA’s alternative stay theory, and (c) improperly using the mechanism of a notice of data availability rather than a new proposal of a substantive revision of the rule apparently to avoid procedural requirements and hasten finalization of the suspension. *Id.* While Commenters have requested that EPA extend the comment period and hold a public hearing to allow for full consideration of EPA’s new proposal, the agency has not responded to that request. *See infra* n. 4.

This pattern of suspending and removing any requirements applicable to the oil and gas sector has likewise been apparent in other actions. For example, the Administrator withdrew an information collection request designed to facilitate adoption of standards for existing oil and gas sources only a day after the attorneys general from a number of major oil and gas producing states requested it. *See* EPA, Notice Regarding Withdrawal of Obligation to Submit Information, 82 Fed. Reg. 12,817 (March 7, 2017). And, despite doing so purportedly to rethink the request, there is no indication that the Administrator has any intention of collecting data or promulgating a regulation (required by the Act) for existing sources. Based on this clear pattern, it is apparent that EPA and Administrator Pruitt have improperly predetermined the result of this rulemaking, thereby thwarting and undermining the opportunity for meaningful public comment. Finalizing the proposed rules would be an unlawful result of this predetermined course.

IV. The Alleged Technical Issues Identified in the Supplemental Notices and Prior Industry Comments Neither Support a Stay nor a Revision of the Compliance Deadlines.

In addition to the fundamental legal deficiencies associated with the supplemental notices, described above, the Administrator raises certain alleged technical issues that the agency suggests support its proposed actions. These include both newly-identified issues and issues that recapitulate many of the supposed technical issues originally identified in the stay proposals, *see, e.g.* 82 Fed. Reg. at 51789-92, and which the D.C. Circuit found to be invalid bases for a stay pending reconsideration under section 307(d)(7)(B). *Clean Air Council*, 862 F.3d at 8-12. The Administrator suggests that this mish-mash of issues support both his efforts to stay the NSPS and its alternative, new theory to revise the regulation's compliance deadlines.

As discussed above, *supra* 20-23, however, the Administrator provides no data whatsoever supporting these new technical issues and so the agency's conclusory reliance on them is manifestly arbitrary and capricious. In any event, available information—including information from previous state experience and newly analyzed data—contradicts the vague and generalized concerns raised in the supplemental notices. Indeed, were these legitimate technical issues in need of correction, EPA has many tools at its disposal to make swift and surgical adjustments to the NSPS that would be of much more immediate and certain assistance to the industry than the protracted regulatory path it has chosen. That the agency has failed to initiate (let alone complete) any of these actions in the nearly eight months since its grant of reconsideration is further evidence that these technical issues are simply a means to achieving EPA's predetermined outcome of suspending certain key provisions of the NSPS and ultimately rescinding these and potentially other aspects of the standards.

We discuss each of these issues in more detail below. Part A focuses on the newly-presented technical issues in the supplemental notices, describing how EPA's reliance on these alleged concerns is manifestly arbitrary and capricious. Part B presents available information related to these alleged new issues, which contradicts the unsubstantiated concerns EPA has raised. Part C focuses on the technical issues originally identified in the Suspension Proposal, briefly addressing new arguments raised in the Supplemental notices. Finally, Part D contrasts EPA's past practice of swiftly making technical adjustments to the oil and gas standards with the agency's current, exclusive focus on suspending the standards, demonstrating that the agency has

provided no rational explanation for the additional time it has suggested it needs to address these issues. This section also provides constructive options for EPA to provide requested clarity to the industry

A. EPA’s reliance on the new technical issues identified in the supplemental notices is manifestly arbitrary and capricious.

EPA’s supplemental notices identify several new issues where operators supposedly need more time to make investments in order to come into compliance with the 2016 Rule. Specifically, EPA suggests that, based on “stakeholder input” there may not be sufficient trained personnel and equipment to conduct required leak detection and repair surveys, 82 Fed. Reg. at 51791-92, and similarly, that there may not be enough certified professional engineers to enable sources to comply with aspects of the storage vessel, compressor, and pneumatic pump requirements. *Id.* at 51791. These newfound alleged shortages so happen to relate to the same standards that EPA previously (and unsuccessfully) sought to stay and apparently justify a “phase-in” of the exact same length as the earlier stay.

EPA’s reliance on these issues to support its proposed stay or change in the compliance deadlines is arbitrary and capricious for at least four reasons: the agency (1) provided no information at all in the supplemental notices or the docket to substantiate these alleged technical issues, (2) entirely failed to consider available and highly-relevant information that would shed light on these questions; (3) failed to explain its marked divergence from EPA’s conclusions in the 2016 Rule, and (4) arbitrarily suggested that the issues equally support either a stay or a change in the compliance deadlines. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

First, EPA has failed to provide any data substantiating the alleged lack of leak detection and repair service providers and certified professional engineers. For both, the notice of data availability vaguely references “stakeholder feedback” as the source of these concerns, but there is no further information supporting these claims or even attributing them in the notice of data availability, in any supplemental materials in the docket, or indeed, in any of the industry comments EPA relies upon. Indeed, the comment letters cited in the supplemental notice do not even raise these concerns, let alone provide supporting data. As discussed earlier, *supra* 14-24, this deficiency runs afoul of the Clean Air Act’s substantive and procedural requirements.

It is also fundamentally arbitrary and capricious to propose a regulatory alternative without providing any factual support. In other instances in which EPA has determined that compliance deadlines should be phased-in or extended, the agency has provided information rationally connected to that conclusion. For instance, EPA’s 2012 NSPS for the oil and gas sector established a phased approach to implementing the reduced emission completion requirement, based on EPA’s conclusions concerning the near-term supply of personnel and REC equipment. 77 Fed. Reg. at 49,517-18 (providing a REC Unit Supply Analysis based on future supply data, survey data, and operating assumptions). As explained *supra* 21-22 the agency supplied even more detailed justification in 2013, when it amended previously-established compliance deadlines applicable to storage vessels. 78 Fed Reg. at 22,131 (analyzing emission control device manufacturing rates, projected buildup of manufacturing capacity and

other technical issues). In stark contrast, EPA’s speculation in these supplemental notices about the availability of LDAR personnel and professional engineers is not supported by *any* factual analysis and is therefore arbitrary and capricious.

Second, EPA has entirely failed to consider information relevant to the compliance difficulties the agency now alleges, including data now in EPA’s possession. As described earlier, *supra* 3-5, operators subject to the NSPS requirements have now submitted compliance reports to EPA with detailed information concerning how affected sources have complied with the fugitive emissions requirements along with those aspects of the standards that require certification by a professional engineer. In failing to assess this information, much less make it available for the public to comment upon, EPA has “entirely failed to consider an important aspect of the problem.” *State Farm*, 463 U.S. at 43. Nor, as explained below, has EPA apparently made any effort to actually do any assessment of the availability of LDAR providers or equipment, or of professional engineers.

Third, EPA has failed to explain its divergence from conclusions supporting the phase-in periods in the NSPS. *FCC v. Fox Television Stations*, 556 U.S. 502 (2009). In issuing the 2016 Rule, EPA explained that it was providing a year-long phase-in for LDAR requirements to allow for build-up of trained equipment and personnel, but noted that once these were in place, subsequent compliance with the standards would be viable on shorter timeframes. 81 Fed. Reg. at 35,859. EPA based this conclusion on information provided by device manufacturers and equipment suppliers. *Id* at 35,855. EPA though now suggests that these periods may have been insufficient, but provides no explanation for why its previous conclusions were inaccurate.

Fourth, there is no rational connection between these technical issues—which are designed to allow operators to make investments needed to comply with the rules as written—and EPA’s proposed stay. Indeed, the proposed stay is meant to forestall these very investments on the theory that EPA may change the requirements in the future, and so sources that may not have to comply on account of these changes should not now be forced to do so. EPA cannot use technical questions designed to *facilitate* investments to justify a policy aimed at preventing those investments.

In sum, it would be manifestly arbitrary and capricious for EPA to rely on the technical issues presented in the supplemental notices to justify a stay or revision to the compliance deadlines.

B. Available information contradicts the vague, generalized concerns raised in the supplemental notices.

In the NSPS, EPA concluded that a one-year phase-in would provide ample lead time to facilitate compliance with the Rule’s LDAR requirements and that professional engineers would be available to certify compliance with several of the Rule’s requirements. Available information supports the reasonableness of EPA’s conclusions in the NSPS and contradicts the vague and generalized concerns EPA now raises in the supplemental notices with respect to these provisions.

i. Leak Detection and Repair.

States that have adopted leak detection and repair requirements for new sources have all provided for phase-in periods well short of the year-long period in the NSPS.

- Colorado's initial standards. Colorado adopted initial LDAR requirements applicable to well sites and compressor stations in February 2014. These rules included requirements for LDAR programs to be implemented at certain new well sites by November 15, 2014 and at all such sites by January 1, 2015—both of which were less than a year after the rules were adopted.²⁰ MJ Bradley estimated the full time equivalent LDAR technicians required to implement Colorado's requirements in its first year at 161, which is a significant percentage of the *nationwide* demand MJ Bradley estimated for new sources in year 1 due to the NSPS (223 to 378 FTE). Will Allison, former director of the Colorado Department of Public Health and the Environment's Air Quality Control Division has provided a short report,²¹ in which he described Colorado's experience designing and implementing these LDAR requirement. Based on this experience, he confirmed that these requirements were being implemented smoothly without any disruptions. *Id.* That a single state—Colorado—was able to smoothly implement LDAR provisions that required a significant percentage of the demand now associated with EPA's standards and in less time, suggests that the original 1-year timeline in the NSPS is entirely reasonable
- Colorado's strengthened standards. On November 16, 2017, Colorado adopted revisions to its State Implementation Plan for ozone, adding additional LDAR requirements for well sites and compressor stations. The implementation timelines for these revisions provide operators of equipment constructed before January 1, 2018 approximately seven months to implement LDAR requirements. For equipment constructed on or after January 1, 2018, the standards provide well sites with 30 days after commencing operation to complete initial LDAR surveys²² and compressor stations with 90 days to complete such surveys.²³

²⁰ 5 C.C.R. 1009, Section XVII.4.a.

²¹ Attached as William Allison, Colorado's Implementation of Requirements for Leak Detection and Repair and Closed Vent Systems (Dec. 8, 2017).

²² 5 C.C.R. 1009, Section XII.L.2.

²³ 5 C.C.R. 1009, Section XII.L.1.

- California. California adopted new rules for the oil and gas sector on March 23, 2017.²⁴ These rules include enhanced LDAR requirements beginning on January 1, 2018.²⁵
- Wyoming. Wyoming incorporated an LDAR requirement for wells in the Upper Green River Basin in its presumptive Best Available Control Technology permit guidance in September 2013. The requirement took effect upon finalization of the guidance, thereby requiring any operator wishing to utilize the permit guidance to construct a new well with fugitive VOC emissions of at least 4 tons per year to conduct quarterly leak inspections.²⁶

Several other states have incorporated LDAR requirements into their general permits, meaning that operators who chose to use the general permit mechanism had to comply with the LDAR requirements at the time they constructed a new well. Though many of these requirements are not as stringent as EPA's LDAR standards and do not cover sources as comprehensively, they do utilize the same types of equipment and so provide evidence on the amount of time reasonable to prepare for compliance with the standards. For example:

- Ohio. Ohio incorporated an LDAR requirement into its general permit for unconventional well sites in April 2014. Operators wishing to authorize construction of a new unconventional well were required to implement a quarterly LDAR program upon startup of new production.²⁷
- Utah. Utah incorporated an LDAR requirement into its general permit for well sites in June 2014. This provided operators ninety days after startup of a new facility to conduct an LDAR inspection.²⁸
- Pennsylvania's initial standards. Pennsylvania finalized a quarterly LDAR requirement for compressor stations in February 2013. Operators wishing to use the general permit to authorize construction of new compressor stations had to comply with its LDAR requirements from that date forward.²⁹

²⁴ CARB Final Regulation Order,
<https://www.arb.ca.gov/regact/2016/oilandgas2016/oilgasfro.pdf>

²⁵ 17 Cal. Code of Reg. § 95669(c).

²⁶ Wyoming Oil and Gas Production Facilities Ch. 6, Sec. 2 Permitting Guidance (Sept. 2013), 22, *available at*
<http://deq.wyoming.gov/media/attachments/Air%20Quality/New%20Source%20Review/Guidance%20Documents/5-12-2016%20Oil%20and%20Gas%20Guidance.pdf>.

²⁷ Ohio GP 12.1, Section 5(c)(2).

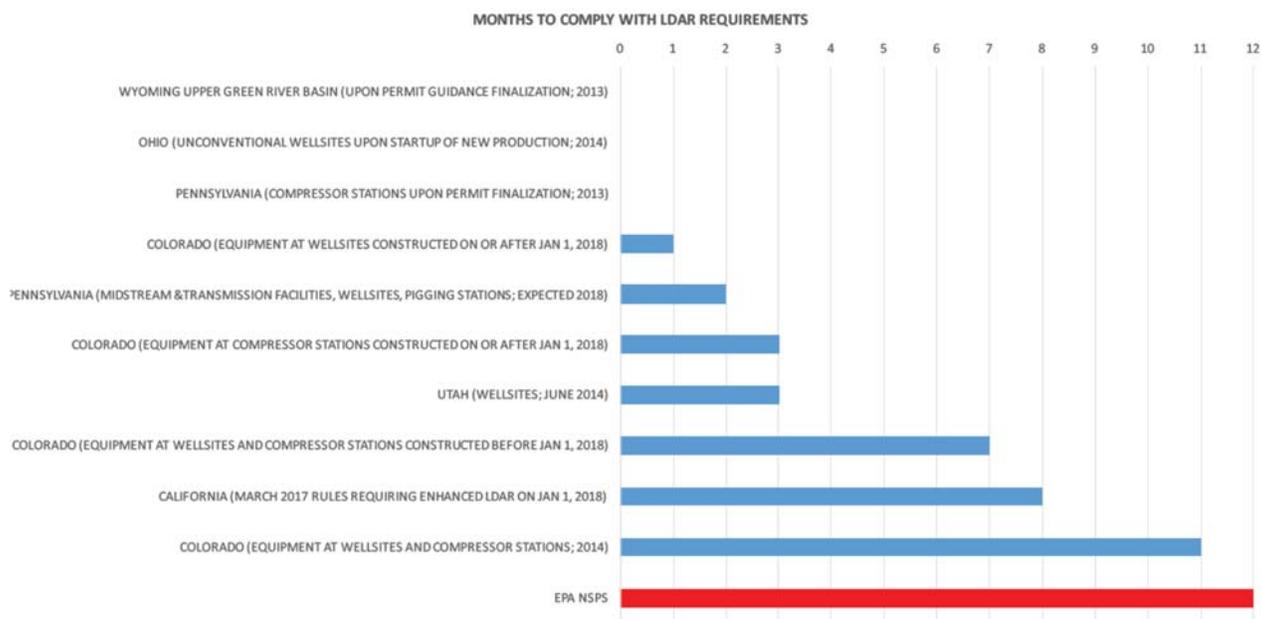
²⁸ Utah General Approval Order: Crude Oil and Natural Gas Well Site and/or Tank Battery, II.B.10.a.

²⁹ Pennsylvania GP5, Section H9.

- Pennsylvania’s revised standards. Pennsylvania recently released the details of two draft final general permits (GP)—an updated version of GP-5 applicable to midstream and natural gas transmission facilities and GP-5A for unconventional well sites and pigging stations. Both GPs would require operators to conduct LDAR no later than 60 days after initial startup, and quarterly thereafter.³⁰

These timeframes demonstrate operators’ ability to implement LDAR programs for new sources in major energy-producing states within one year or less of final rule promulgation and immediately upon permit finalization. If anything, this information suggests that EPA’s original phase-in was too generous, and it certainly does not support any further extension of that period, let alone one that would grant two additional years. Figure 1, below, summarizes the duration of these phase-in periods.

FIGURE 1: Comparison of State LDAR Phase-in with EPA’s Phase-in



Recently completed technical analyses further confirm the widespread availability of leak detection and repair service providers. For instance, in March of 2017, Datu Research produced a Report that surveyed and characterized 60 leak detection and repair service providers across the United States.³¹ The Report found that these firms were operating in 45 states across the country,

³⁰ Pennsylvania Draft GP 5, Section K. Pennsylvania Draft GP 5A, Section K.

³¹ Datu Research, Find and Fix: Job Creation in the Emerging Leak and Repair Industry (March 2017), <https://www.edf.org/sites/default/files/find-and-fix-datu-research.pdf>.

and that in states with leak detection and repair standards, firms had experienced between 5 and 30 percent growth.³² The below figures provide further details on the characteristics and locations of these companies.

FIGURE 2: Datu Research Figures

FIGURE 3. Annual Revenue, Leak Detection and Repair Firms in \$ Millions

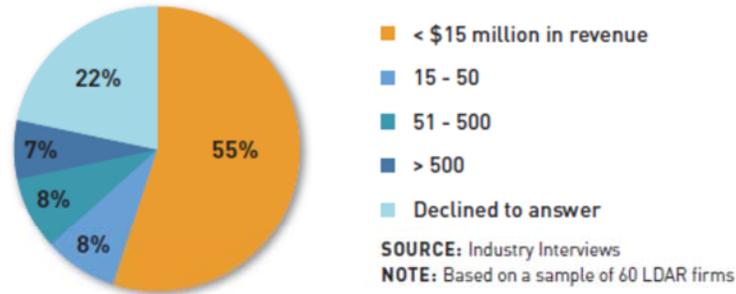


FIGURE 4. Number of Employees, Leak Detection and Repair Firms

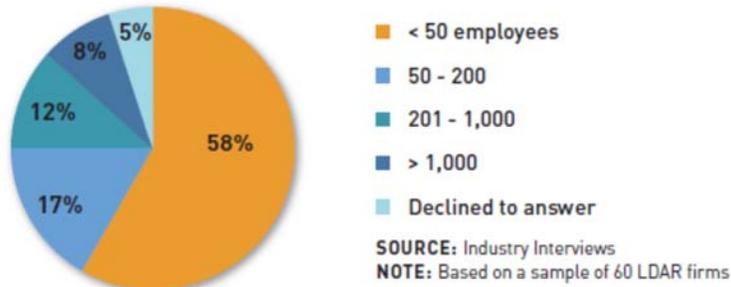
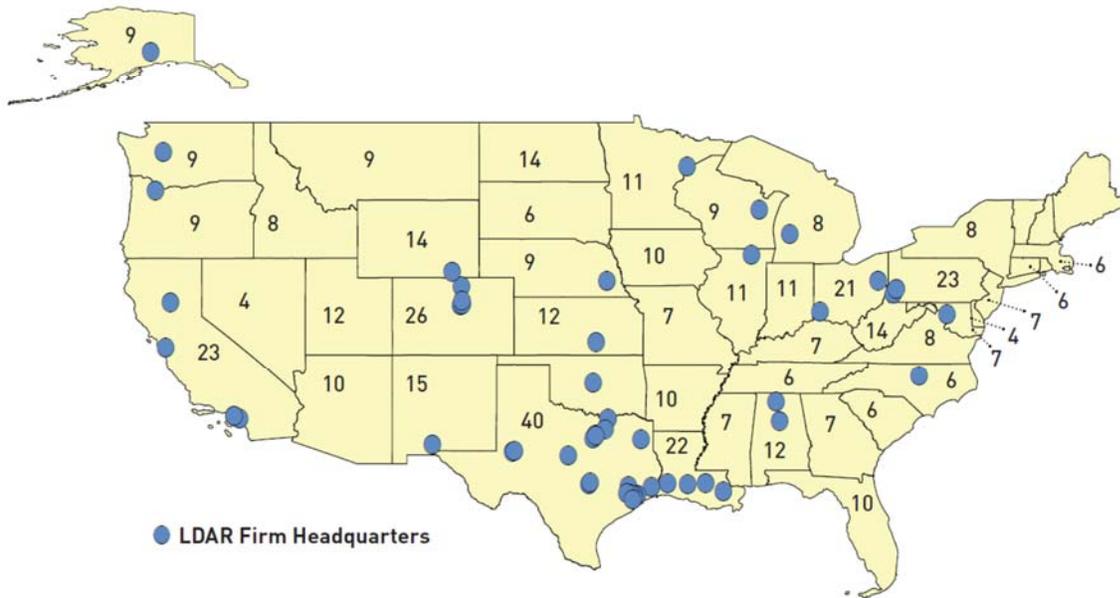


FIGURE 6. Number of LDAR Firms Serving Oil & Gas Clients, By State



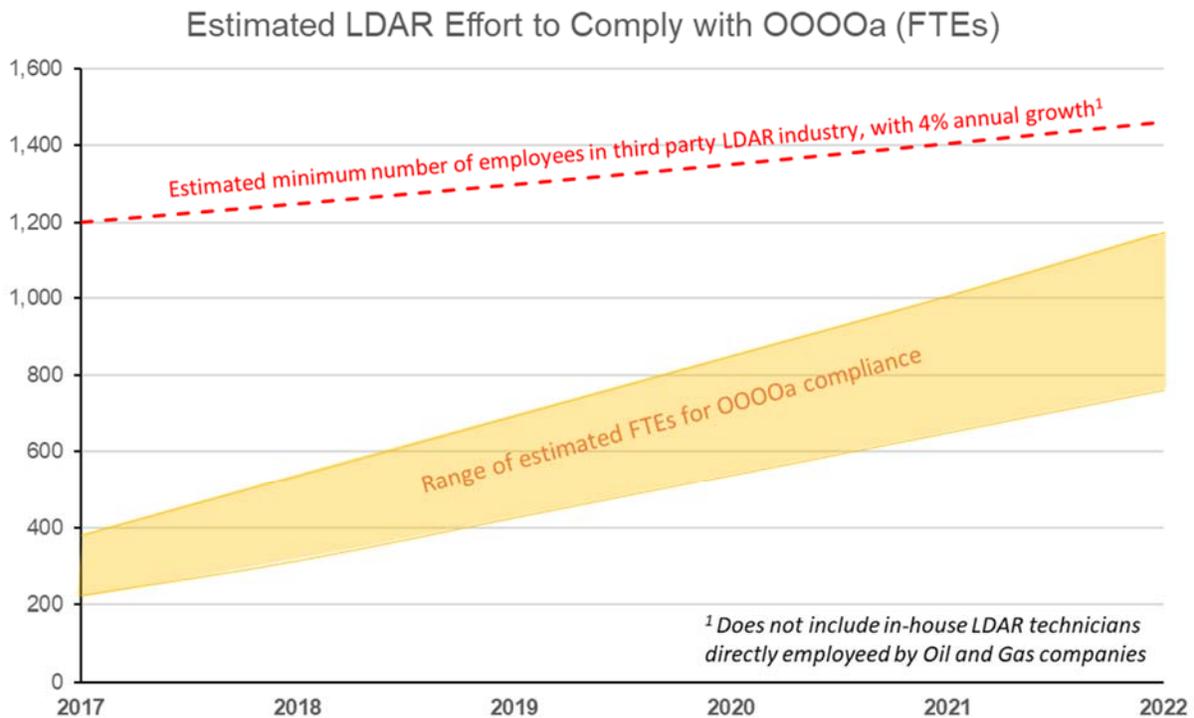
SOURCE: Industry Interviews and U.S. Energy Information Administration
NOTE: Based on a sample of 60 LDAR firms

³² *Id.*

In addition, MJ Bradley and Associates completed an analysis, attached as *Memorandum: LDAR Workforce Analysis* (Dec. 6, 2017), which projects demand for new LDAR services based both on EPA estimates of new source build rates (apparently not considered by EPA in this rulemaking) and actual data identifying new sources constructed since October of 2015. The analysis compares demand for LDAR services with available supply, building from work done in the Datu Report and additional company survey information. The MJ Bradley analysis concludes that available LDAR service supply today far exceeds projected demand in 2018 and 2019 (the period covering EPA's alleged shortfall) and through 2020 and beyond. In particular, MJ Bradley projects 2018 and 2019 demand for LDAR services due to the NSPS is between 300 and 700 full-time LDAR employees. Currently, the analysis finds that there are at least 1,200 LDAR technicians working at third-party LDAR service providers and as many as 3,600. This analysis demonstrates the LDAR supply far exceeds demand associated with NSPS OOOOa, even when considering non-overlapping sources of regulatory demand like Colorado's existing source standards (estimated at an addition 161 FTE). Moreover, this analysis is extremely conservative, because it does not account for use of in-house providers and equipment, which are widely used by larger companies to fulfill these obligations.³³ Growth of the industry (which both the Datu Report and MJ Bradley Analysis show is likely) and use of in-house services will even further enhance the available supply of LDAR services and thus the ease with which companies can comply with the standards. Figure 3, below compares existing, minimum third party LDAR service provider supply to demand attributable to NSPS.

³³ Colorado's analysis of LDAR Requirements, for example, assumed that any company with over 500 wells would chose to use an in-house LDAR program. Colorado Department of Public Health and Environment, Regulatory Analysis for Proposed Revisions to Colorado Air Quality Control Commission Regulation Numbers 3, 6 and 7, at 43 (Feb. 11, 2014), *available at* <https://www.sos.state.co.us/CCR/Upload/AGORequest/RegulatoryAnalysisAttachment2013-01217.PDF>.

FIGURE 3: Estimated LDAR Labor (FTE) for OOOOa Compliance and Estimated Size of Third-party LDAR Industry, with 4% annual growth



ii. Professional Engineering Certification.

The supplemental notices also suggest, without presenting any evidence or attribution, that an extension of the compliance deadlines is warranted because there are not enough professional engineers to certify closed vent systems routing emissions from storage vessels, compressors and pneumatic pumps. 82 Fed. Reg. at 51,794.

Environmental Commenters discussed—and rebutted—this argument in our initial submission on the Suspension Proposal. Environmental Comments at 22-23. More recently, Colorado considered and rejected substantially similar claims. In November 2017, the Colorado Air Quality Control Commission adopted a requirement that operators obtain the certification of a professional engineer in order to exempt pneumatic pumps from control requirements.³⁴ In that rulemaking, industry parties raised essentially the same argument about a supposed lack of availability of professional engineers.³⁵ The state rejected these claims finding that there was “no information to suggest that a requirement to obtain a PE assessment would impact the cost effectiveness of the Division’s proposal.”³⁶ The fact that neither the opponents of Colorado’s

³⁴ 5 CCR 1001-9, Section XII.K.2.c.

³⁵ Joint Prehearing Statement of Colorado Oil & Gas Association, Colorado Petroleum Council, and Colorado Petroleum Association 13.

³⁶ Rebuttal Statement of the Colorado Department of Public Health and Environment, Air Pollution Control Division, In the Matter of Proposed Revisions to Regulation Number 7 (Oct. 4, 2017), 16.

proposal nor EPA in this instance have offered any actual evidence indicating an insufficient number of professional engineers strongly indicates that such a shortfall does not, in fact, exist.

In addition, the National Society for Professional Engineers (NSPE) submitted comments to this docket opposing any EPA efforts to further suspend the standards on the alleged basis of a lack of certified professional engineers. The NSPE comments note that there are over 400,000 resident and an additional 400,000 non-resident professional engineers in the United States. MJ Bradley’s Analysis in the attached *Memorandum: Estimate of Professional Engineers in O&G Industry* (Dec. 6, 2017), builds from this information and other available data on the number of professional engineers. The analysis focuses on five large oil and gas producing states and specifically (and conservatively) identifies the number of professional engineers that work for oil and gas firms or very likely have the requisite knowledge, skills, and training to certify compliance with the EPA requirements. MJ Bradley’s analysis concludes that there are likely anywhere between 3,340 and 5,486 professional engineers operating in these states classified as petroleum, mechanical or structural engineers. Using the same methodologies, MJ Bradley projected between 8,000-13,000 such professional engineers operating nationally. Figure 4 provides more detail on the state-level analysis.³⁷

FIGURE 4: Estimated Number* of PEs in O&G Industry in TX, OK, CO, WY, AND OH

Discipline	Texas	Oklahoma**	Colorado	Wyoming**	Ohio	Total
Petroleum	1,488 – 2,025	255	293 – 398	31	172 – 234	2,238 – 2,943
Mechanical	564 – 1,252	161 – 357	111 – 246	9	65 -145	910 – 2,009
Structural	105 – 319	30 – 91	21 – 63	24	12 -37	192 – 534
Total	2,157 – 3,596	445 – 703	424 – 707	63	249 – 416	3,339 – 5,485

* Totals may not sum due to independent rounding

** If applying the ratio (number of PEs per MMcf production) to other states generated an estimate greater than the known number of registered PEs within a discipline, the percentage of PEs within each discipline who work in the O&G industry (based on Texas breakdown analysis) was applied. Petroleum engineers in Oklahoma and petroleum, mechanical, and structural engineers in Wyoming were estimated using this method.

It was arbitrary for EPA neither to collect the kind of information discussed above or even consider the information that is already publicly available, as Joint Environmental Commenters have now endeavored to do. EPA cannot rely on vague and unattributed “suggestions” to finalize a rule, much less when relevant data is easily accessible.

Moreover, even if EPA receives some actual, substantiated, and specific data through these supplemental notices demonstrating that certain operators have experienced difficulty

³⁷ As with the LDAR analysis, supply of professional engineers are also augmented by those that work in-house for oil and gas companies, as API has recognized in comments in this docket. API Comments on EPA’s NSPS for the Oil and Natural Gas Sector, EPA-HQ-OAR-2010-0505-6884, 49 (Dec. 4, 2015) (“Oil and natural gas company engineering staff, with experience in the oil and natural gas industry and emissions control systems, and many with PE registration, are able to design systems effectively.”).

complying with the NSPS due to lack of available LDAR service providers and equipment or professional engineers, that would not justify staying the NSPS or extending its compliance deadlines broadly for *all* regulated entities. Rather, consistent with the overriding purposes of section 111 to reduce emissions, EPA should ensure that any compliance relief is granted only where necessary.

C. The Administrator’s Attempt to Recapitulate Previously-Identified Technical Issues is Similarly Unavailing.

EPA’s supplemental notices also recapitulate a number of technical issues raised in the Suspension Proposal and identified in certain of the industry comments the agency now cites. *See, e.g.*, 82 Fed. Reg. 51,789- 51,793 (discussing alternative means of emission limitations, low producing wells, third party contractual arrangements, delay of repair, and greenfield issues). Any effort by EPA to amend the NSPS’s compliance dates based on these issues would be arbitrary and capricious and suffer from the same deficiencies as the issues EPA has raised for the first time in the supplemental notices. In particular, the agency provides no information substantiating these alleged concerns and fails entirely to explain the divergent conclusions reflected in the NSPS. In addition, there is no rational connection between these technical issues—which may be associated with some future policy change on EPA’s part—and EPA’s newly proposed revision to extend compliance deadlines—which purports to provide *operators* with time needed to ramp up. Our previously submitted comments on the Suspension Proposal and our supplemental comments responding to API’s submission address these technical issues in more detail. Environmental Comments; Supplemental Environmental Comments. We incorporate those comments by reference here and address only certain new points related to these issues and raised by EPA for the first time in the supplemental notices.

In particular, EPA now erroneously claims that the intent behind the AMEL requirement was to “achieve emission reductions from currently uncontrolled sources while still allowing sources subject to effective existing state fugitive emissions programs an avenue to continue implementing such programs....” 82 Fed. Reg. at 51,791. But EPA misconstrues the intent of the AMEL program and its authority under the Clean Air Act. Pursuant to the statute, EPA may only use AMEL to the extent that the programs “will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the [work practice standards].” 42 U.S.C. 7411(h)(3). And it is the operator’s burden, “after notice and opportunity for public hearing” to “establish[] to the satisfaction of the Administrator” that the alternative means will do so.³⁸ *Id.* AMEL is thus an *alternative* means—one for which the burden is on the operator to justify—and its availability or lack thereof simply does not provide a basis for staying or delaying the *primary* means of compliance. EPA’s fugitive emissions standard was fully supported based on an analysis of the costs of control and emissions reductions to be achieved by the program established in the NSPS, without relying on the

³⁸ Notably, EPA provides no data or information about whether any operator has even given notice, sought a hearing, or otherwise attempted to establish that some alternative means is equivalent or better than the NSPS’s LDAR program. Nor is there evidence of any alleged difficulties operators have faced in attempting to do so or of the reasons for those difficulties, if any.

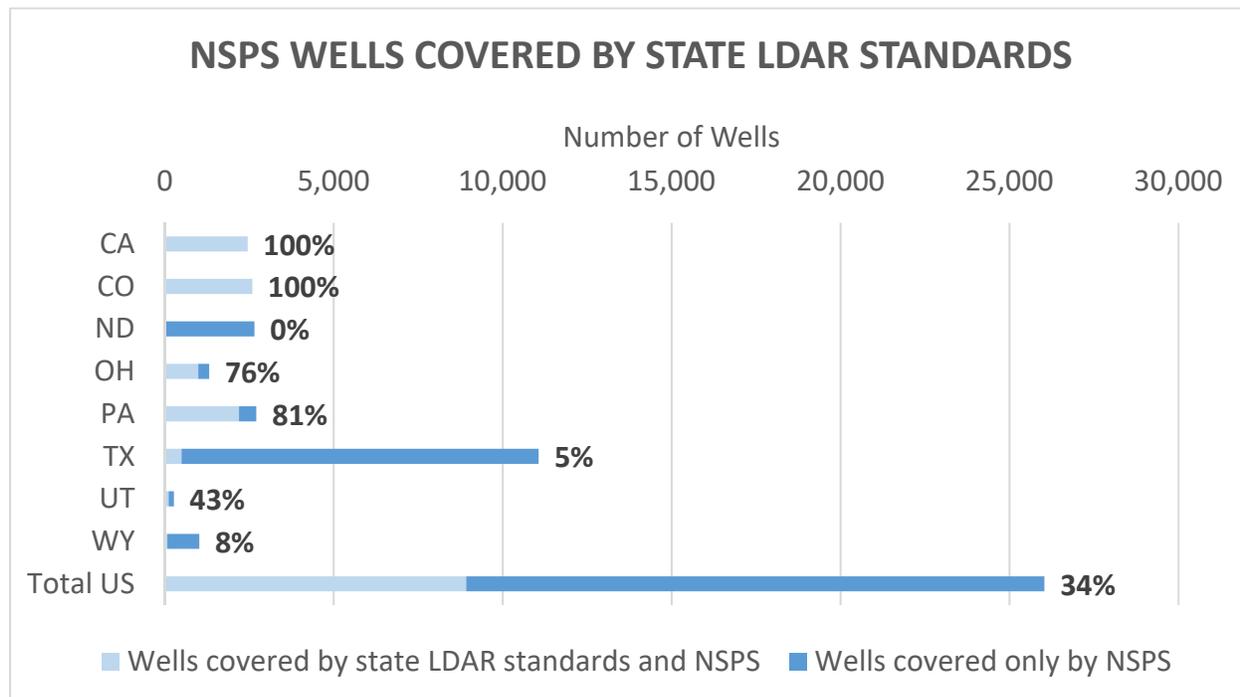
existence or use of alternative compliance mechanisms. TSD at 1. The AMEL process was merely a voluntary option for facilities subject to the NSPS. The bottom line under the Clean Air Act is that the reduction in emissions reflected by BSER must be achieved, and there is simply no rational basis for revising the NSPS's compliance deadlines for LDAR on the basis of concerns about the AMEL process.

EPA also speculates that, because of existing state level programs, “it is not clear that the marginal additional emission reductions achieved during the EPA’s reconsideration process outweigh the potential disruption to existing state programs and company-specific programs.” 82 Fed. Reg. 51,791. The agency provides no data or analysis to support this proposition, but generally claims that California, Colorado, North Dakota, Ohio, Pennsylvania, Texas, Utah, and Wyoming have such programs.

This, too, contradicts past agency analysis, which identified only a subset of these states as having potentially-equivalent LDAR programs³⁹ and is likewise inconsistent with new analyses. An attached report includes both a detailed qualitative and quantitative comparison of the state programs and the LDAR standards in the NSPS. Renee McVay, Hillary Hull, *Assessment of State-Level Fugitive Emissions Programs in Comparison to EPA NSPS* (Dec. 8, 2017). As the analysis demonstrates, programs EPA identifies in states like North Dakota and Texas address virtually none of the wells covered by the NSPS, and other states, like Utah, cover fewer sources and have far less stringent requirements than the NSPS. Some major oil and gas producing states that were not identified by EPA—like New Mexico—likewise have no standards. Any conclusion that EPA’s standards do not deliver substantial additional emission reductions—even in the states with preexisting programs—is arbitrary and inconsistent with available data. Figure 5, below, shows the number of wells covered by EPA standards that would also be covered by state standards. Importantly, even for the substantially smaller number of wells covered by state standards, those standards are often weaker than NSPS requirements and so the NSPS would deliver benefits at many of those sites as well.

³⁹ EPA, Regulatory Impact Analysis of the Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources 3-10 (May 2016) (“2016 RIA”)

FIGURE 5: NSPS Wells Covered by State LDAR Standards



D. The Administrator Has Failed to Explain Why Two Years Is Necessary to Address Any Purported Technical Issues.

Finally, even if the technical issues identified in the supplemental notices are meritorious (which they are not), EPA has arbitrarily failed to demonstrate why it believes two years are needed to complete any adjustments to the standards, or why a stay or extension is needed for all affected sources. Indeed, this claim is flatly inconsistent with EPA’s long history of effectively addressing any implementation issues through timely rulemaking and by issuing agency guidance and determinations.

In its original reconsideration request, API suggested that some of the alleged technical issues that EPA now identifies in the supplemental notices could be addressed through guidance. API, Request for Administrative Reconsideration EPA’s Final Rule “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources,” EPA-HQ-OAR-2010-0505-7682, 15-16 (Aug. 2, 2016) (suggesting EPA could clarify AMEL requirements by issuing guidance). In the past, API has sought clarification on technical issues regarding regulatory requirements, which EPA has swiftly provided. For instance, on July 25, 2012, API requested clarification from EPA on several issues that API indicated “will significantly impact the planning, capital investment, and time for installation of required controls.” API Request for Clarification (July 25, 2012) EPA Doc. No. EPA-HQ-OAR-2010-0505-7696 *available at* <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0505-7696>. On September 28, 2012, approximately two months later, EPA issued a response to API clarifying the agency’s intentions in the final rule regarding each of the dozen issues raised, including gas well completions (applicability, definitions, compliance dates, digital photo requirements), storage

vessels (definitions and applicability), performance testing (compliance dates), compressors (notification requirements), equipment leaks (definition), and as allowances for new and alternative technologies for storage vessels. Similarly, on June 16, 2016, API requested further clarification from EPA on work practice standards for flowback following hydraulic fracturing in the 2016 NSPS. On November 1, 2016, approximately five months later, EPA issued a further clarifying response to API.⁴⁰

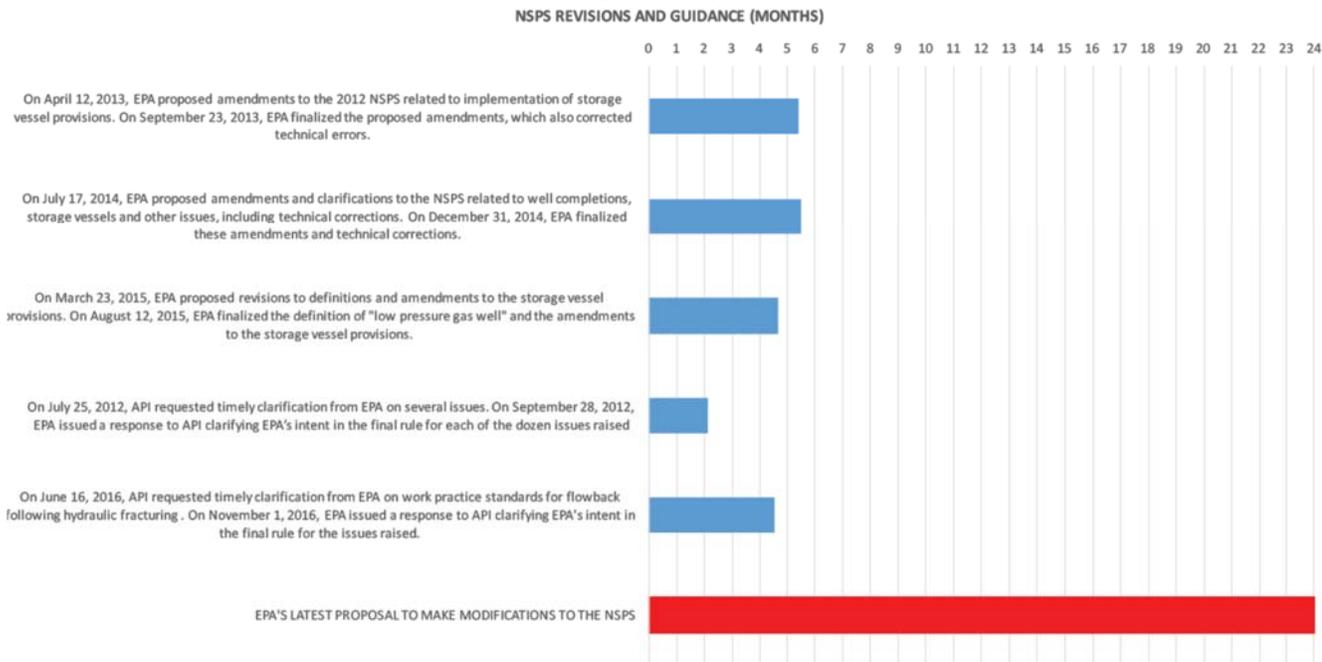
In this case, there is no reason why EPA cannot quickly resolve the questions pertaining to AMEL that API raised in its reconsideration petition, such as whether a trade group can apply for an AMEL on behalf of all of its members in a particular state. API, Request for Administrative Reconsideration at 15-16. And here, the Administrator has not even established that the current application process has deterred any operators from applying to use an alternative means.

Even in instances in which EPA determined that a rulemaking was appropriate to address technical issues, the agency completed those rulemakings swiftly. On April 17, 2012, EPA issued updated New Source Performance Standards for the oil and natural gas industry and the following subsequent technical revisions to those standards were proposed and quickly finalized:

- On April 12, 2013, 78 Fed. Reg. 22,126, EPA proposed amendments to the 2012 NSPS after reconsidering certain issues related to implementation of the storage vessel provisions. Approximately five months later, on September 23, 2013, 78 Fed. Reg. 58,416, EPA finalized amendments that clarified notification and compliance dates, ensured control of all storage vessel affected facilities, and updated key definitions. The amendments also corrected technical issues.
- On July 17, 2014, 79 Fed. Reg. 41,752, EPA proposed amendments and clarifications to the NSPS after reconsidering certain issues related to well completions, storage vessels, and other issues raised for reconsideration. EPA also proposed technical corrections and amendments to further clarify the NSPS. On December 31, 2014, 79 Fed. Reg. 79,018, approximately five months later, EPA finalized these amendments and technical corrections.
- On March 23, 2015, 80 Fed. Reg. 15,180, EPA proposed revisions to the definition of “low pressure gas well” in order to correct what the agency characterized as a procedural defect. EPA also proposed to remove provisions concerning storage vessels connected or installed in parallel and to revise the definition of “storage vessel.” Approximately five months later, on August 12, 2015 80 Fed. Reg. 48,262, EPA finalized the definition of “low pressure gas well” and the amendments to the storage vessel provisions.

⁴⁰ In its response, EPA indicated that “any releases of gas or vapor during ‘screenouts’ and ‘coil tubing cleanouts’” which occur during the initial flowback stage are not subject to control under §60.5375a. These activities are subject to all other requirements applicable to the initial flowback stage such as the general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback and subsequent recovery.” EPA-HQ-OAR-2010-0505-7722.

FIGURE 6: NSPS Revisions and Guidance (Months)



In addition to the rule revisions and guidance documents, EPA has also issued several agency determinations addressing specific applicability issues:

- On December 30, 2013 EPA issued a regulatory interpretation regarding the submission of photographs for natural gas well completion annual reports for Samson Energy in Texas;
- On August 11, 2014 EPA issued an applicability determination for two compressor units at the Hattieville Compressor Station in Arkansas;
- On February 17, 2015 EPA issued an applicability determination for JP Energy pipeline station storage vessels in Kansas;
- On April 27, 2015 EPA approved an alternative reporting schedule for the Atlas Pipeline Driver Gas Plant in Texas;
- On September 3, 2015 EPA issued an applicability determination for the Ignacio Gas Plant in Colorado; and

- On November 23, 2015 EPA disapproved a petition to allow the use of alternative monitoring procedures for pilot light monitoring from Aux Sable Liquid Products LP in Illinois.⁴¹

All of these EPA actions, subsequent to updating the NSPS in 2012, demonstrate the agency's ability to issue timely updates, clarifications, technical guidance, technical data documents, and compliance determinations in order to swiftly address issues that arise with implementation. Indeed, EPA accomplished all within the space of five months, which contradicts the agency's claims that it now needs nearly five times as long to address these new questions. Moreover, almost eight months have elapsed since EPA initially granted reconsideration requests related to the technical issues identified in the supplemental notices, and the agency has yet to propose (let alone finalize) any substantive adjustments to these aspects of the NSPS. The agency's focus on suspending (and eventually rescinding) the standards suggests that EPA is only using these alleged technical issues as a way to reach its predetermined outcome for this rulemaking and has no interest in actually resolving these technical issues.

V. The Administrator's Analysis of the Impacts of the Stay/Compliance Revision Is Arbitrary and Capricious.

A. The Administrator has failed to properly assess the impacts of the compliance extensions that he now proposes.

In the supplemental notices, EPA indicates—for the first time—that it is considering a substantive amendment to the Rule to add an additional two-year “phase in” period for the Rule's compliance dates. 82 Fed. Reg. at 51,788. EPA indicates that this “phase in” period is an “alternative to the proposed stay.” *Id.* EPA, however, fails to conduct any analysis of the impacts of the delay in compliance that it now proposes. EPA's failure to consider an “important aspect of the problem” render its actions arbitrary and capricious. *State Farm*, 463 U.S. at 42-43.

Instead of conducting the required analysis of the foregone benefits (including climate impacts and public health effects) and the cost savings to industry associated with the proposed “phase in,” EPA attempts to piggyback on its analysis of cost savings and foregone benefits associated with the proposed two-year stay of the Rule. EPA claims that “[w]hile this analysis supports the proposed two-year stay, the results also support the two-year extension of the phase in period as discussed in the Notice of Data Availability.” EPA, Memorandum Re: Estimated Cost Savings and Foregone Benefits Associated with the Proposed Rule, “Oil and Natural Gas: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements,” at 2 (Oct. 17, 2017), Docket ID EPA-HQ-OAR-2010-0505-1236 (“Cost Memo”). The assumptions in the Cost Memo, however, are fundamentally incompatible with EPA's purported rationale for the “phase in,” and thus the analysis in the Cost Memo cannot support an extended “phase in” of the Rule's compliances dates.

⁴¹ EPA Office of Enforcement and Compliance Assurance Applicability Determination Index (ADI) <https://cfpub.epa.gov/adi/> (The ADI is maintained by EPA's Office of Enforcement and Compliance Assurance and provides a data base of memoranda dealing with applicability issues).

In the supplemental notices, EPA claims that “extending the ‘phase in’ periods provided in the 2016 Rule for a build-up of the number of trained personnel (*i.e.*, certified monitoring survey contractors, qualified professional engineers) and equipment (*i.e.*, monitoring instruments)” may be “required to meet the demand imposed by the fugitive emissions requirements and the well site pneumatic pump requirements” 82 Fed. Reg. at 51,791. EPA also indicates that it is similarly considering providing “a phase-in period to allow a scale-up of the number of qualified professional engineers to meet the demand imposed by the 2016 Rule.” *Id.* This rationale presupposes that operators are having difficulty implementing the NSPS, and that many operators are in fact *unable* to comply with the rule because of an alleged shortage of personnel or equipment.

The Cost Memo, by contrast, “assumes all facilities affected prior to the stay are in compliance with the 2016 Rule”—an assumption that fundamentally contradicts with the purported rationale for extending “phase-in periods” because operators *cannot* comply. Cost Memo at 2. Assuming that all facilities are currently in compliance also reduces the apparent harm associated with the compliance revision. Because of this contradiction, as well as the utter lack of any detailed discussion of the “phase in” in the Cost Memo, EPA cannot rely on the Cost Memo as a proper analysis of the impacts of the proposed “phase in” period. EPA’s failure to conduct a proper analysis of the proposed “phase in extension’s” costs and benefits is therefore arbitrary and capricious.

B. The Administrator’s analysis sharply underestimates the foregone benefits of curbing methane pollution, and is arbitrary and capricious.

In the supplemental notices, EPA presents new estimates of the foregone climate benefits associated with delaying the NSPS that are dramatically lower than estimates provided in the NSPS, and are based on a new “interim” social cost of methane that EPA has never before presented for public comment. 82 Fed. Reg. at 51,794. This interim social cost of methane purports to include only the domestic costs of methane pollution, and discounts future impacts of methane pollution at rates as high as 7 percent per year. By contrast, the NSPS utilized social cost of methane figures approved by a twelve-agency working group (the “Interagency Working Group” or IWG), which accounted for the full, global costs of methane pollution and reflected a range of discount rates from 2.5 to 5 percent (with a central estimate of 3 percent), plus an analysis of costs at the 95th percentile using a 3 percent discount rate to reflect higher-than-expected temperature increases. EPA’s new methodology has the effect of dramatically reducing the estimated costs of methane pollution: the EPA estimates in the Memorandum that the foregone climate benefits would range from just \$5.4 to 23 million per year,⁴² whereas the central methodology used in the 2016 Rule would yield benefits ranging from \$140-180 million

⁴² See Cost Memo, Table 6 at 10 (reporting forgone climate benefits in 2018 and 2019, at discount rates of 3 and 7 percent).

per year.⁴³ EPA’s approach thus reduces the foregone climate benefits of the proposed action by as much as 96 percent.⁴⁴

EPA’s new estimate of foregone climate benefits in the supplemental notices drastically underestimates the economic value of the health and environmental damages of methane pollution, and is arbitrary and capricious because it departs from the best available science and EPA’s prior practice without a well-reasoned explanation.⁴⁵ As discussed below, EPA’s approach ignores important rationales that underpinned the use of the global cost of methane in the 2016 Rule. EPA recognized in the 2016 Rule that methane is a global pollutant whose economic impacts can only be fully accounted for by considering its impacts both within the United States and abroad. The 2016 Rule also recognized that the United States has a national interest in encouraging other jurisdictions to fully account for the costs of climate pollution, which would be put at risk if EPA were to focus solely on domestic costs. And as the 2016 Rule also demonstrates, EPA’s interim approach in fact *omits* important impacts of climate pollution on the United States – including economic disruption abroad and its impacts on U.S. trade and investment patterns, refugee migration and political destabilization, and other harmful repercussions.

In proposing the use of a “domestic” social cost of methane, EPA is acting just as recklessly as a homeowner who dumps trash in his neighbor’s yard without considering whether that might attract pests or generate noxious odors; affect his property value; or prompt his neighbor to respond in kind. EPA’s use of a 7 percent discount rate is equally arbitrary, in that it is dramatically higher than the expert consensus and is widely recognized as inappropriate for analysis of long-term policies with intergenerational consequences.

EPA’s principal justification for its approach is that the Office of Management and Budget’s (OMB) Circular A-4 calls for the use of a domestic value discount rates of 3 and 7 percent. This is incorrect: as explained below, the IWG approach was fully consistent with Circular A-4, and EPA’s interim approach fails to adhere to Circular A-4 in key respects. Moreover, OMB guidance does not relieve EPA of its obligation under the Clean Air Act and the Administrative Procedure Act to consider all relevant factors, to articulate a “rational connection between the facts found and the choice made,” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)), and to provide “good reasons” for departing from prior policies and practices, *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009). EPA’s reliance on Circular A-4 as a talismanic explanation for its interim social cost of methane falls far short of this standard.

⁴³ See Cost Memo, Appendix A.3, at 21-22 (reporting foregone global climate benefits with the IWG’s “central” discount rate of 3 percent).

⁴⁴ Comparing the 2019 forgone climate benefits of \$7.3 million (7 percent discount rate) to the global forgone climate benefits of \$180 million (3 percent discount rate) that EPA has estimated for 2019. See Cost Memo at 10, 21-22.

⁴⁵ Several of the organizations signing these comments have joined a separate comment letter filed by the New York University School of Law’s Institute for Policy Integrity, which provides a more comprehensive critique of EPA’s interim social cost of methane.

i. *EPA’s Estimate of the Domestic Costs of Methane Pollution is Fatally Flawed.*

EPA’s interim social cost of methane drastically undervalues the true costs of methane pollution by attempting to focus only on climate impacts that physically occur within the United States. In so doing, EPA fails to address either the methodological flaws in its approach or the central rationales that EPA cited in support of its use of a global cost estimate in the 2016 Rule. In the RIA for the 2016 Rule, EPA explained that its analysis incorporates the global costs of methane pollution for three separate reasons:

First, emissions of most GHGs contribute to damages around the world independent of the country in which they are emitted. The SC-CO2⁴⁶ must therefore incorporate the full (global) damages caused by GHG emissions to address the global nature of the problem. Second, the U.S. operates in a global and highly interconnected economy, such that impacts on the other side of the world can affect our economy. This means that the true costs of climate change to the U.S. are larger than the direct impacts that simply occur within the U.S. Third, climate change represents a classic public goods problem because each country’s reductions benefit everyone else and no country can be excluded from enjoying the benefits of other countries’ reductions, even if it provides no reductions itself. In this situation, the only way to achieve an economically efficient level of emissions reductions is for countries to cooperate in providing mutually beneficial reductions beyond the level that would be justified only by their own domestic benefits.

EPA, Regulatory Impact Analysis of the Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources 4-8 (May 2016) (“2016 RIA”). The RIA went on to note that the IWG concluded there “is no bright line between domestic and global damages,” and that “[a]dverse impacts on other countries can have spillover effects on the United States, particularly in the areas of national security, international trade, public health, and humanitarian concerns.” *Id.* at 4-8. The Seventh Circuit upheld this same logic when it rejected an industry challenge to the Department of Energy’s use of the IWG’s global social cost of carbon metric. *Zero Zone Inc. v. Dep’t of Energy*, 832 F.3d 654, 677 (7th Cir. 2016) (holding that Department had reasonably identified carbon pollution as “a global externality” and appropriately concluded that, because “national energy conservation has global effects, . . . those global effects are an appropriate consideration when looking at a national policy”).

EPA has failed to explain why it is has rejected these rationales in the supplemental notices, nor could it provide a well-reasoned explanation for doing so. First, there is no question that EPA’s “domestic” social cost of methane is based on models that fail to account for important ways in which global climate impacts affect U.S. interests—through physical damage to U.S. citizens and assets overseas, effects on global economic growth and demand for U.S.

⁴⁶ “SC-CO2” refers to the social cost of carbon, a metric closely related to the social cost of methane. As the 2016 RIA explains, the social cost of methane used in the 2016 Rule relies on the same rationales for assessing global impacts that underlie the SC-CO2. *See* 2016 RIA, at 4-14.

products, humanitarian crises resulting in broad displacement of peoples, political destabilization, and other harmful repercussions. For this reason, leading economists in the field of climate economics (including a Nobel laureate) have described “domestic” social cost figures as “deeply misleading” estimates that “wrongly assume that the United States is an island unaffected by migration, national security, global economic disruptions and other cross-border externalities.”⁴⁷

Notably, the 2017 report by the National Academies that is cited in the supplemental notices specifically calls out these limitations, concluding that “[c]limate damages to the United States *cannot be accurately characterized without accounting for consequences outside U.S. borders.*”⁴⁸ As the report explains:

Correctly calculating the portion of the SC-CO₂ that directly affects the United States involves more than examining the direct impacts of climate that occur within the country’s physical borders As the IWG noted (Interagency Working Group on the Social Cost of Carbon, 2010), climate change in other regions of the world could affect the United States through such pathways as global migration, economic destabilization, and political destabilization. In addition, the United States could be affected by changes in economic conditions of its trading partners: lower economic growth in other regions could reduce demand for U.S. exports, and lower productivity could increase the prices of U.S. imports. *The current SC-IAMs do not fully account for these types of interactions among the United States and other nations or world regions in a manner that allows for the estimation of comprehensive impacts for the United States.*⁴⁹

OMB and the federal agencies in the IWG concluded in 2015 that “good methodologies for estimating domestic damages do not currently exist.”⁵⁰ Similarly, William Nordhaus, the developer of the DICE model (one of the three integrated assessment models underlying the social cost of methane), has cautioned that “regional damage estimates are both incomplete and poorly understood,” and “there is little agreement on the distribution of the SCC by region.”⁵¹ Although the supplemental notices briefly acknowledge the deep flaws in EPA’s approach, Cost

⁴⁷ Richard L. Revesz et al., *The Social Cost of Carbon: A Global Imperative*, 11 Review of Environmental Economics and Policy 172, 173 (2017), available at http://policyintegrity.org/files/publications/REEP_SCC_2017.pdf.

⁴⁸ National Academies of Sciences, Engineering, and Medicine, *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* 53 (2017) (emphasis added) (“National Academies 2017”).

⁴⁹ National Academies 2017, at 52-53.

⁵⁰ Interagency Working Group on the Social Cost of Carbon, *Response to Comments: Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12,866* at 36 (July 2015) (“IWG Response to Comments”).

⁵¹ William Nordhaus, *Revisiting the Social Cost of Carbon*, 114 PNAS 1518, 1522 (2017).

Memo at 11-12, they provide no explanation as to why EPA has overlooked those flaws and instead opted to use a social cost of methane that excludes the many obvious and important ways in which global climate impacts can inflict costs on the United States.

EPA also utterly fails to consider the repercussions that a “domestic-only” social cost of methane might have for global actions to reduce methane pollution, which were another rationale cited in the NSPS for using the global social cost of methane. As EPA notes in that final rule, methane and other climate pollutants have global impacts—meaning that actions taken by other countries to reduce greenhouse gas pollution inevitably have benefits for the United States and vice-versa. Because all countries are affected by greenhouse gas pollution emitted anywhere, optimal reductions of these pollutants can only be achieved if every country takes into account the full, global costs of its emissions of these pollutants. Many other countries are, in fact, following the United States’ initial lead in accounting for the global impacts of methane and other climate pollutants⁵²—a practice that generates significant economic benefits for the United States.⁵³ By contrast, the “domestic-only” approach in the supplemental notices would severely underestimate the true costs of methane pollution—and lead to inadequate limits on that pollution, to the detriment of the United States and all countries—if it were widely adopted. Citing extensive academic literature, the National Academies recognized that these reciprocity effects are one reason to use a global measure of the social cost of climate pollution.⁵⁴

EPA’s only attempt to justify its approach appears in a footnote at the end of the Cost Memo, in which it states that “the basic argument for adopting a domestic only perspective for the central benefit-cost analysis of domestic policies is ... that the authority to regulate only extends to a nation’s own residents who have consented to adhere to the same set of rules and values for collective decision-making, as well as the assumption that most domestic policies will have negligible effects on the welfare of other countries’ residents.” Cost Memo at 21, n.19. Neither of these justifications is applicable in the context of this rulemaking and neither is responsive to the core rationales for the global social cost of methane that were presented in the

⁵² See Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 *Columbia J. Envtl. L.* 203, 223 (2017) (noting that Canada, Mexico, Sweden, Germany, the United Kingdom, Norway, and the European Union have all adopted global social cost metrics, and that many other jurisdictions have adopted policies that put a price on climate pollution consistent with global social cost metrics).

⁵³ See Peter Howard & Jason Schwartz, *Foreign Action, Domestic Windfall: the U.S. Economy Stands to Gain Trillions from Foreign Climate Action* 11 (Institute for Policy Integrity, Nov. 2015) (estimating that direct U.S. benefits from global climate policies already in effect are over \$2 trillion through 2030), available at <http://policyintegrity.org/files/publications/ForeignActionDomesticWindfall.pdf>.

⁵⁴ National Academies 2017 at 53 (“In addition, the United States may choose to use a global SC-CO₂ in order to leverage reciprocal measures by other countries (Kopp and Mignone, 2013; Howard and Schwartz, 2016). The National Academies further notes that such reciprocity impacts should be accounted for in evaluating the impacts of climate pollution on the United States. *Id.* at 9.

RIA for the NSPS. In particular, nothing about using a global social cost of methane to assess the benefits of the oil and gas NSPS would imply EPA has “authority to regulate” outside of U.S. borders. To the contrary, the argument for using a global social cost of methane is based on the *United States’ national interest in fully accounting for the costs of methane pollution*. Furthermore, as EPA itself concedes in the Cost Memo, the assumption that foreign impacts of domestic policies are “negligible” does not apply to climate policy, an arena “for which domestic policies may result in impacts outside of U.S. borders due to the global nature of the pollutants.” Cost Memo at 21, n.19. In fact, there is no “may” about it: as the National Academies of Sciences has observed, “U.S. emissions impose *most* of their damage beyond U.S. borders.”⁵⁵

In short, EPA’s proposed use of a “domestic” social cost of methane is akin to a homeowner who dumps trash in his neighbor’s yard without considering whether that might attract pests or generate noxious odors, affect his property value, or prompt his neighbor to respond in kind – leaving both neighbors’ yards full of garbage. EPA should abandon this inherently arbitrary and flawed approach, and fully account for the costs of methane pollution in the same way EPA did it did in the 2016 Rule.

ii. *EPA’s Use of a 7 Percent Discount Rate Arbitrarily Understates the Cost of Methane Pollution.*

The supplemental notices also steeply discount the future costs of methane pollution by presenting foregone climate benefits using a 7 percent discount rate, alongside an estimate of benefits using a 3 percent discount rate. This is a wildly inappropriate assumption for a long-term, intergenerational problem like climate change. As OMB Circular A-4 notes, “[p]rivate market rates provide a reliable reference for determining how society values time within a generation, but for extremely long time periods no comparable private rates exist.” Circular A-4 at 36. Under these circumstances, Circular A-4 suggests that uncertainty about the appropriate discount rate supports using “the *minimum discount rate having any substantial positive probability*.” *Id.* As EPA notes in the Cost Memo, Circular A-4 also suggests that where policies have intergenerational effects, agencies should consider conducting sensitivity analyses “using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.” *Id.* at 35-36.

Moreover, the seven percent discount rate is inconsistent with the models that underlie the social cost of methane. As OMB and the National Academies have both observed, the models underlying the social cost of carbon (and the social cost of methane) measure the impacts of climate change on *private consumption*,⁵⁶ in contrast to its impacts on capital investment. In

⁵⁵ *Id.*

⁵⁶ IWG Response to Comments at 22; National Academies at 162 (Whether the descriptive approach calls for using the pretax return on capital or the consumption rate of interest depends on whether benefits and costs are measured in consumption equivalents. *If they are, then the theoretically correct discount rate is the rate at which consumers would trade consumption today for consumption in the future.* In many cases, the benefits of avoiding climate change, such as health benefits, accrue directly to consumers or affect the prices consumers pay for goods and

those circumstances, both economic theory and Circular A-4 recommend the use of a *consumption rate of interest* much lower than 7 percent.⁵⁷ Indeed, the National Academies refers to the consumption rate of interest as the “theoretically correct discount rate” where benefits and costs are measured in consumption equivalents, as they are in the models underlying the social cost of methane.⁵⁸ Although OMB’s suggested discount rate of 3 percent (which was also used for the core estimates in the 2016 Rule) is intended to reflect consumption rates of interest,⁵⁹ recent analyses have pointed out that this default is outdated and that discount rates as low as 2 percent would more accurately reflect consumption rate of interest in light of persistent declines in long-term interest rates.⁶⁰

EPA’s 7 percent discount rate is also inconsistent with expert opinion in the field of climate economics. According to a recent expert elicitation of over 1,100 economists in the field of climate economics, there is a growing consensus in favor of an initial discount rate of no greater than 2 to 3 percent and/or one that declines as time progresses. Ninety percent of the economists surveyed supported a discount rate of 5 percent or less.⁶¹ Similarly, the 2017 National Academies report observes that the IWG discount rates of 2.5, 3, and 5 percent were carefully selected to reflect economic theory and peer-reviewed literature, and that the majority of climate change impact studies cited in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change “use an implied social discount rate of no more than 5 percent.”⁶²

The 2016 Rule and Regulatory Impact Analysis make clear that EPA was making conservative estimates that, if anything, undervalued the economic benefits associated with the 2016 Rule.⁶³ In the event EPA seeks to revisit the Social Cost of Methane, the 2016 Rule and available science could only support approaches that would lead to far *greater* economic benefits

services. Even when climate damages do not directly affect consumers, *damage estimates from the SC-IAMs are reported in consumption-equivalent units.*”) (emphasis added).

⁵⁷ IWG Response to Comments at 22 (citing Circular A-4).

⁵⁸ National Academies 2017 at 162.

⁵⁹ National Academies 2017 at 160; Circular A-4 at 11.

⁶⁰ The Council of Economic Advisers recommended this year that a discount rate based on the consumption rate of interest “should be at most 2 percent.” Council of Econ. Advisers, Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate at 1 (CEA Issue Brief, 2017), *available at* https://obamawhitehouse.archives.gov/sites/default/files/page/files/201701_cea_discounting_issue_brief.pdf.

⁶¹ Peter Howard & Derek Sylvan, *The Economic Climate: Establishing Expert Consensus on the Economics of Climate Change* 21, Inst. Policy Integrity (Dec. 2015).

⁶² National Academies 2017 at 168. The social cost of methane used in the 2016 Rule reflected the same discount rates of 2.5, 3, and 5 percent that were approved by the IWG for the social cost of carbon. *See* 2016 RIA, at 1-8 n.1.

⁶³ *See* RIA at 4-9 to 4-19.

from the Rule – including, for example, relying on a very small, or even negative, discount rate,⁶⁴ and updating the Global Warming Potential for methane to reflect the latest science.⁶⁵ For these reasons as well, the notices of data availability and EPA’s rationales are arbitrary and capricious.

iii. *EPA Cannot Hide Behind Circular A-4 to Avoid Providing a Reasoned Explanation for its Interim Social Cost of Methane.*

EPA’s principal justification for its deeply flawed and arbitrary approach to the social cost of methane is that Circular A-4 calls for a focus on domestic impacts and the use of 3 and 7 percent discount of rates. Cost Memo at 8. Neither of these assertions is true. In any event, Circular A-4 does not relieve EPA of its obligation under the Clean Air Act and the Administrative Procedure Act to provide a well-reasoned explanation for its methodological choices and its departure from the 2016 Rule.

First, it is plain that Circular A-4 does not require that EPA ignore the global costs of methane pollution. Circular A-4 only sets forth guidelines for analysis, and it admonishes agencies to tailor their cost-benefit analyses to the unique circumstances of each rule rather than adhere to a rigid and wooden “formula.” Circular A-4 at 3. As Circular A-4 explains, “[c]onducting high-quality analysis requires competent professional judgment. Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.” *Id.* Although Circular A-4 recommends that agencies “focus” on benefits and costs that “accrue to citizens and residents of the United States,” it also calls for separate reporting of impacts “beyond the borders of the United States.” *Id.* at 15. It by no means *precludes* agencies from considering global impacts in an appropriate regulatory setting. Indeed, the text of Circular A-4 implicitly acknowledges that some cost-benefit analyses may be conducted using a global perspective.⁶⁶

⁶⁴ See, e.g., *supra* n.60 (CEA Issue Brief, 2017); see also Frank Ackerman & Elizabeth A. Stanton, *the Social Cost of Carbon*, 2 (Apr. 2010); Marc Fleurbaey & Stephane Zuber, *Climate Policies Deserve a Negative Discount Rate*, 13 Chi. J. Int’l Law 565 (2013); Kenneth J. Arrow *et al.*, *Should Governments Use a Declining Discount Rate in Policy Analysis*, Review of Env’tl. Econ. & Pol’y (2014); Martin L. Weitzman, *Why the Far-Distant Future Should Be Discounted at the Lowest Possible Rate*, J. Env’tl. Econ & Mgt. 36:201-08 (1998).

⁶⁵ Compare 2016 Rule at 35,827 (relying on methane 100-year GWP of 25) with IPCC Working Group I, Fifth Assessment Report, *Climate Change 2013: The Physical Science Basis*, Chapter 8: Anthropogenic and Natural Radiative Forcing (2014) at 633, 711-712, 714 (Table 8.7), available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf (providing adjustments in note B for fossil methane; 85-87 times greater than carbon over a 20 year period, and 30-36 times greater during a 100 year period).

⁶⁶ Circular A-4 at 38 (explaining that “transfers from the United States to other nations should be included as costs, and transfers from other nations to the United States as benefits, *as long as the analysis is conducted from the United States perspective.*”).

Moreover, as explained in detail above, EPA’s proposed approach is inconsistent with Circular A-4 in key respects. A fundamental weakness in EPA’s so-called “domestic” social cost of methane is that it *omits* key climate impacts that “accrue to citizens and residents of the United States” —including international spillovers, the risk of retaliatory action from other nations, the possibility of national security and humanitarian crises that will affect U.S. citizens and residents, and impacts on United States citizens and assets overseas. It is also out of step with the findings of the National Academies and experts in climate economics, which all underscore the deeply flawed nature of the approach in the supplemental notices. As such, EPA’s interim social cost of methane is inconsistent with Circular A-4’s guidance that agencies use the “best reasonably obtainable scientific, technical, and economic information available.” *Id.* at 17.

Neither does Circular A-4 require EPA to blindly use an inappropriately high 7 percent discount rate. As explained above, Circular A-4 recognizes that policies with long time horizons and intergenerational effects should be evaluated with lower discount rates—and suggests that agencies evaluate sensitivities using discount rates even lower than 3 percent. Circular A-4 also recognizes that a 7 percent discount rate is appropriate only for analyses of policies that primarily displace capital investments. As OMB and the other agencies in the IWG concluded in responding to public comments on the social cost of carbon, the (much lower) consumption rate of interest “is the correct concept to use” and “consistent with OMB guidance in Circular A-4” when evaluating impacts of climate pollution.⁶⁷

Lastly, regardless of the guidance in Circular A-4, EPA is still obligated under the Clean Air Act and the Administrative Procedure Act to provide a well-reasoned explanation for its interim social cost of methane after consideration of all relevant factors. OMB guidance does not – and cannot – displace these fundamental statutory requirements and basic principles of administrative law.⁶⁸ Furthermore, that Circular A-4 may counsel a particular approach does *not*, by itself, constitute a talismanic explanation that is sufficient to meet standards of reasoned decision-making. To be sure, OMB guidance may be indicative of the reasonableness of an agency’s approach to cost-benefit analysis. But if OMB were to recommend that agencies deem that two plus two equals five, or ignore all environmental benefits in a cost-benefit analysis, it would be just as arbitrary and unlawful for EPA to rely on that guidance as it would be for EPA to reach such determinations on its own.

Here, EPA’s sole justification for its focus on domestic costs and its use of a 7 percent discount rate is its assertion that Circular A-4 requires these methodological choices. This “explanation” is incorrect, insufficient, and patently arbitrary in light of its manifest inconsistencies and failure to grapple with the well-established rationales in the 2016 Rule and the underlying IWG reports, the National Academies report cited in EPA’s own Memorandum, and the other expert literature discussed here. EPA has an obligation to provide “good reasons” for its departure from the 2016 Rule and to explain why it is “disregarding facts and

⁶⁷ IWG Response to Comments at 22.

⁶⁸ *Cf. In re United Mine Workers of Am. Int’l Union*, 190 F. 3d 545 (D.C. Cir. 1999) (“[T]he President is without authority to set aside congressional legislation by executive order...”); *Chamber of Commerce of the United States v. Reich*, 74 F.3d 1322, 1339 (D.C. Cir. 1995) (striking down Executive Order that conflicted with the National Labor Relations Act).

circumstances that underlay or were engendered by the prior policy.” *Fox*, 556 U.S. at 515-16. It has failed to do so in the supplemental notices.

VI. The Three-Month Stay/Compliance Revision Is Arbitrary and Unlawful.

Alongside the supplemental notice for the two-year stay proposal, EPA has issued an additional supplemental notice to either stay or “phase in” the same provisions of the NSPS for three months, which would take effect immediately upon finalization. *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements*, 82 Fed. Reg. 51,794 (Nov. 8, 2017). EPA’s three-month proposal is deficient for the same reasons as the two-year proposal, as the “legal and factual basis for the shorter stay are the same as those for the proposed longer stay.” 82 Fed. Reg. at 51,795. In our earlier comments, Environmental Comments 26-27, we explained additional reasons why the three-month stay proposal is unlawful, including that the agency’s original rationale that the shorter action would serve as a bridge to the two-year stay is no longer true. In any event, EPA does not address any of these deficiencies in the three-month notice, and here, we describe why a three-month “phase-in” is illogical, unsupported, and unlawful.

The supplemental notices now simultaneously propose to revise compliance deadlines in the NSPS by “phasing in” already-phased-in protections by three months and two years, respectively. As described above, *supra* at 14-24, a phase-in—whether three months or two years in duration—is a substantive revision of the NSPS’s compliance deadlines and so must comply with section 111’s requirements. In particular, these revisions must reflect the BSER. EPA has made no effort to describe how its revised compliance deadlines would constitute BSER, but even if it had, the agency simply cannot rationally conclude that the statutory factors simultaneously support both a three-month and two-year change to the compliance dates. *See* 82 Fed. Reg. 51,798 (requesting comment on how much additional time operators would need to procure additional equipment and hire trained personnel). Put another way, it is impossible that a set of as-yet-undetermined facts could simultaneously point to the need to alter compliance dates in dramatically different ways.

In any event, as with other features of its proposals and supplemental notices, EPA’s alternative three-month “phase-in” simply underscores that the agency is set on removing compliance obligations for affected sources as quickly as possible—EPA previously concluded that the three-month action would not be subject to review under the Congressional Review Act—and will pursue any avenue to secure this end, regardless of the legal or factual support for its approach. But these considerations fall outside of those that the agency can permissibly entertain under section 111, and accordingly, EPA’s three-month stay should be rejected.

VII. It Would Be Unlawful to Give Any Suspension or Revision Retroactive Effect.

The Administrator has not proposed to retroactively eliminate operators’ liability for noncompliance with the requirements of the NSPS, nor has it solicited comment on the retroactive relief of liability, although one commenter suggested that the Administrator should take such action. GPA Comments at 9-11. The NSPS’s requirements are presently in full effect,

and operators are legally obligated to be in compliance. Any attempt to retroactively relieve operators' compliance obligations would be unlawful for several reasons.

First, the Administrator lacks statutory authority to promulgate a retroactive rule. One of the fundamental principles of administrative rulemaking is that “retroactivity is not favored in the law.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Therefore, “[a]n agency may not promulgate retroactive rules absent express congressional authority.” *Nat’l Min. Ass’n v. Dep’t of Labor*, 292 F.3d 849, 859 (D.C. Cir. 2002) (citing *Bowen*, 488 U.S. at 208). No provision in the Clean Air Act allows EPA to issue *any* kind of rule with retroactive effect, rules staying or extending compliance deadlines. See *Sierra Club v. Whitman*, 285 F.3d 63, 68 (D.C. Cir. 2002) (“The relevant provisions of the Clean Air Act contain no language suggesting that Congress intended to give EPA the unusual ability to implement rules retroactively.”). Section 307(d)(7)(B) is the only provision in the Act that provides authority for EPA to issue a stay, and the language of that provision indicates that it applies contemporaneously with a reconsideration of a rule, not retroactively. 42 U.S.C. § 7607(d)(7)(B) (providing that the “effectiveness of the rule may be stayed *during* such reconsideration”) (emphasis added). Other provisions in the Clean Air Act likewise indicate that EPA must conduct *prospective*, not retroactive, rulemaking. Section 111 indicates that “[s]tandards of performance or revisions thereof *shall become effective upon promulgation*.” 42 U.S.C. § 7411(b)(1)(B) (emphasis added). And nothing in the language of section 301, 42 U.S.C. § 7601, indicates that “Congress intended to give EPA the unusual ability to implement rules retroactively.” *Sierra Club*, 285 F.3d at 68. The APA likewise prohibits retroactive rulemaking. Under the APA, “a rule is a statement that has legal consequences only for the future.” *Bowen*, 488 U.S. at 217 (Scalia, J., concurring); see also *Sierra Club*, 285 F.3d at 68 (“We have held that the APA prohibits retroactive rulemaking.”).

Second, because the Administrator has failed to propose or solicit comment on retroactively relieving operators' liability for noncompliance, any final suspension that purported to retroactively relieve liability would violate EPA's notice obligations. See *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (agency must “make its views known . . . in a concrete and focused form so as to make criticism or formulation of alternatives possible”).

Any attempt to amend the compliance dates in the NSPS by changing the “phase-in” periods in a way that would excuse operators of their obligation to comply before the compliance revision rule is finalized would be an unlawful retroactive rule. As EPA recognizes in the proposal, the NSPS “provided a phase-in period until November 30, 2016, to connect well site pneumatic pumps to an existing control or process onsite.” 81 Fed. Reg. at 51,798. Likewise, the LDAR requirements of the NSPS phased-in on June 3, 2017. 81 Fed. Reg. 51,794. EPA now claims to be “soliciting comment on whether . . . EPA should amend the above-mentioned phase-in periods in the [NSPS] instead of simply staying the requirements.” *Id.* To the extent EPA is attempting to retroactively amend the NSPS, this is impermissible under the principles barring retroactive regulation and would also constitute an end-run around the D.C. Circuit's decision vacating the agency's initial unlawful delay of the standards. *Clean Air Council*, 862 F.3d at 1. Such an action would “make a mockery” of administrative procedures, since “agencies would be free to violate the rulemaking requirements . . . with impunity if, upon invalidation of a rule, they were free to ‘reissue’ that rule on a retroactive basis.” *Bowen v. Georgetown Univ. Hosp.*, 488

U.S. 204, 225 (1988) (Scalia, J. concurring) (quoting *Georgetown Univ. Hosp. v. Bowen*, 821 F.2d 750, 758 (D.C. Cir. 1987)).

Should EPA finalize a retroactive stay or revision of the compliance dates, either of these actions has retroactive effect because they would “change[] the legal landscape.” *Nat’l Mining Ass’n v. United States Dep’t of Interior*, 177 F.3d 1, 8 (D.C.Cir.1999). Commenters have previously argued that EPA’s effectuation of the earlier backdated stay did not have retroactive effect because it merely relieves a restriction. Comments of GPA Midstream at 10 *available at* <https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0346-0328>. This claim is belied by the clear legal impact of the stay. To determine whether an agency’s rule is retroactive, the “critical question is whether a challenged rule establishes an interpretation that ‘changes the legal landscape.’” *Nat’l Min. Ass’n v. Dep’t of Labor*, 292 F.3d 849, 859 (D.C. Cir. 2002) (quoting *Nat’l Mining Ass’n v. United States Dep’t of Interior*, 177 F.3d 1, 8 (D.C.Cir.1999)). The D.C. Circuit has already noted the retroactive impact of EPA’s previous unlawful stay: “The stay—which EPA made retroactive to one day before the June 3 compliance deadline—eliminates that threat [of civil penalties, citizens’ suits, fines, and imprisonment], and thus relieves regulated parties of liability they would otherwise face.” *Clean Air Council v. Pruitt*, 862 F.3d at *7 (citations omitted). Similarly, EPA’s finalization of either a stay or revision of the compliance dates has actual effects on the both legal rights and duties of the companies required to comply with these regulations as well as the citizens given citizen enforcement power. For example, the finalization of EPA’s proposed actions would change the legal landscape by altering the existing rights of citizens to ensure companies are complying with the legal requirements to repairing leaks during this time period.

Conclusion

For the foregoing reasons, Joint Environmental Commenters urge EPA to abandon its unlawful and unwarranted efforts to stay or delay the critical and commonsense protections contained in the NSPS, and instead enforce the NSPS and initiate a proposed rule to regulate existing sources in the oil and gas sector under section 111(d) of the Clean Air Act.

Peter Zalzal
Rachel Fullmer
Alice Henderson
Rosalie Winn
Samantha Caravello
Environmental Defense Fund
2060 Broadway, Ste. 300
Boulder, CO 80302
pzalzal@edf.org
*Counsel for Environmental
Defense Fund*

Susannah Weaver
Sean Donahue
Donahue & Goldberg, LLP
1111 14th Street, NW
Suite 510A
Washington, DC 20005
susannah@donahuegoldberg.com
Counsel for Environmental Defense Fund

Tomás Carbonell
Environmental Defense Fund
1875 Connecticut Ave., 6th Floor
Washington, D.C., 20009
tcarbonell@edf.org
*Counsel for Environmental
Defense Fund*

Andres Restrepo
Sierra Club
50 F St., NW, Eighth Floor
Washington, DC 20001
Telephone: (202) 650-6073
Andres.Restrepo@sierraclub.org
Joanne Spalding
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
Joanne.Spalding@sierraclub.org
Counsel for Sierra Club

Tim Ballo
Earthjustice
1625 Massachusetts Ave., NW, Ste. 702
Washington, DC 20036
tballo@earthjustice.org
*Counsel for Clean Air Counsel and Sierra
Club*

Darin Schroeder
Ann Weeks
Clean Air Task Force
114 State Street, 6th Floor
Boston MA, 02109
dschroeder@catf.us
aweeks@catf.us
Counsel for Earthworks

Adam Kron
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005
akron@environmentalintegrity.org
*Counsel for Environmental
Integrity Project*

David Doniger
Natural Resources Defense Council
1152 15th St. NW, Suite 300
Washington, DC 20005
ddoniger@nrdc.org
Meleah Geertsma
Natural Resources Defense Council
2 N. Wacker Drive, Suite 1600
Chicago, IL 60606
mgeertsma@nrdc.org
*Counsel for Natural
Resources Defense Council*

Howard M. Crystal
Center for Biological Diversity
1411 K Street, N.W. Suite 1300
Washington, DC 20005
hcrystal@biologicaldiversity.org
Counsel for Center for Biological Diversity

Scott Strand
Environmental Law & Policy Center
15 South 5th Street, Suite 500
Minneapolis, MN 55402
sstrand@elpc.org
*Counsel for Environmental Law & Policy
Center*

Lauren Pagel
Earthworks
1612 K Street NW, Ste. 808
Washington, DC 20006
lpagel@earthworkSACTION.org

Stephanie Kodish
National Parks Conservation Association
706 Walnut Street, Ste. 200
Knoxville, TN 37902
skodish@npca.org
*Counsel for National Parks Conservation
Association*