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January 31, 2022

The Honorable Michael S. Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue N.W., 1101A  
Washington, DC 20460

Re: Comment for Docket ID No. **EPA-H.Q.-OAR-2021-0317**  
Standards of Performance for New, Reconstructed, and Modified Sources and  
Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review

Dear Administrator Regan:

The North Dakota Petroleum Council (NDPC) appreciates the opportunity to submit comments as your agency considers this proposal with the intent to reduce emissions in the oil and gas sector.

Established in 1952, the NDPC is a trade association that represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region.

Our members have a vested interest in Environmental Protection Agency (EPA) efforts to further regulate the industry, and we appreciate the opportunity to comment on this proposal. We have joined a coalition of trade associations in submitting comments, and we are also submitting the following for your consideration.

As an industry, we are proud of our environmental record and take very seriously our responsibility to be good stewards of the lands on which we operate. We appreciate this opportunity to comment on EPA's proposal.

## **Comments**

### 1.0 General

1.1 The oil and gas industry is an integral part of the U.S. economy. In 2020, oil and natural gas accounted for 69% of the energy consumption in the U.S. (Source: U.S. EIA). Affordable energy prices generally benefit all sectors of the American public, and cost-effective regulation of the energy industry can benefit human health and the environment.

However, NDPC does not believe the EPA regulatory impact analysis appropriately justifies the economic burden of the proposed regulation on domestic oil and gas producers. NDPC

understands that revisions to the values for the social costs of carbon and methane are under consideration. NDPC encourages careful consideration of the potential economic burdens on North Dakota's oil and gas producers when applying those values in the regulatory impact analysis for the final rule. Over-regulation of the oil and gas industry increases production costs. This can lead to higher costs for electricity, heating fuels, food, and transportation, which disproportionately impacts low-income Americans.

NDPC asks that the EPA focus on the parts of this proposal that will have the most cost-effective impact on reducing Methane and Volatile Organic Carbon (VOC) emissions going forward and reconsider some of the unnecessarily burdensome requirements, including but not limited to, regulating insignificant sources of emissions, administrative recordkeeping, and reporting requirements that do not directly or significantly impact emission reductions.

We also urge the EPA to consider the most feasible implementation schedule, this will be key in minimizing negative economic impacts.

1.2 NDPC acknowledges the EPA's desire to advance the public process. However, given the extent of the proposal (i.e., revisions to one existing rule, two new rules, and comment on a future rule) and the lack of detailed rule text, our comments are necessarily limited in scope and detail due to the condensed public comment period and the lack of rule text to review. We ask that future rulemakings not be bundled with multiple proposed regulatory actions to give the public and regulated industry the time to participate efficiently and effectively. Silence on any part of this proposal should not be interpreted as our agreement or support. Time constraints have impacted our ability to respond to every piece of this proposal.

1.3 In North Dakota and other regions in the U.S., produced natural gas is associated or dissolved in the crude oil and cannot be produced independently from each other. The State of North Dakota already has regulations in place that:

- Require a minimum of 91% of the associated gas be captured (not flared). Operators are required to report their gas capture data monthly and many companies have their own goals that exceed 91%. This data is available to the public. The latest report from North Dakota's Department of Mineral Resources shows 94% gas capture in November 2021.
- Prohibit the venting of natural gas unless it is flared or otherwise controlled as approved by the Division of Air Quality.
- Require the control of vapors from storage tanks with a flare equipped and operated with an automatic igniter or a continuous burning pilot.

In a state like North Dakota, additional or duplicative regulations add costs and administrative burden that significantly outweigh any corresponding environmental benefit. These regulations could also disincentivize the industry's voluntary programs that have real and measurable positive impacts on the environment.

- 1.4 In developing the BSERs, it does not appear the EPA addresses Storage Vessels other than those with fixed roof. NDPC requests the EPA clarify what storage vessel types they propose to regulate under these new future rules.
- 1.5 EPA is proposing significant requirements on low emitting sources without considering the secondary emissions that will result from their new requirements. Typically, NSPS regulations only apply to Criteria Pollutants, and evaluating secondary emissions would not be appropriate. However, since this NSPS also regulates methane, we believe the EPA's actions could have a more significant negative global impact than the small source the EPA is trying to control. For this reason, we believe the EPA must consider any secondary emission impacts in their analysis.
- 1.6 The EPA should seek to create rules that are easy to understand and implement. The constant amendments, additions, and deletions to the Oil and Natural Gas Sector New Source Performance Standard have made it difficult for industries and agencies to interpret. We have heard that interpretations between EPA regions and states with primacy vary significantly. We suggest the EPA address this by developing regulations and guidance that can be universally understood by agencies and regulated industries.
- 1.7 Reviewing and developing meaningful comments is difficult and inefficient when the EPA does not include the actual proposed rule text. The EPA should not consider this publication a proposed rule without the rule text. NPDC does not believe this action (i.e., the proposed rule in Docket EPA-HQ-OAR-2021-0317) meets the requirements of a Proposed Rule for rule making, and the proposed applicability date for sources that will be subject to the new subpart OOOOb and OOOOc should not be November 15, 2021, but rather the date the actual proposed rule text is published.
- 1.8 NPDC supports keeping the clarifications and efficiency that were included in the 2020 technical amendments to NSPS subpart OOOOa.
- 1.9 North Dakota, as well as some other states, allow for combustion devices other than those that meet 40 CFR 60.18. Some wells and storage tanks do not produce enough gas to support the minimum flow rate as specified in 40 CFR 60.18. In these cases, the best practice is to use a flare that has a lower destruction efficiency with an auto-ignitor that sparks every few seconds. If the EPA requires flares that meet 40 CFR 60.18 with no exceptions, additional gas will need to be brought on-site to make up the minimum flow rate. This will likely result in a net increase of greenhouse gas (GHG) emissions.
- 1.10 In EPA's discussion on Global Warming Potential (GWP), they refer to multiple GWP's for methane. We believe EPA should keep any methane GWP references aligned across regulations for consistency and that the current value of 25 used for GHG Subpart W reporting be maintained.
- 1.11 The NDPC supports additional communication with and outreach to disadvantaged communities but does not understand by what authority under the Clean Air Act (CAA) the EPA plans to regulate or enforce Environmental Justice considerations or negative externalities

in a New Source Performance Standard (NSPS). Additionally, NDPC fears that potentially extraneous and overly burdensome new requirements would have the reverse impact on economically and socially disadvantaged communities by steering oil and gas investment away from communities of need.

Given the many advancements in the oil and gas industry (e.g., equipment, drilling, completions, processing, technologies for sampling and analysis, and for controlling emissions), in the last decade alone, the NDPC suggests that the EPA commission technical studies to explore and understand the 2022 oil and gas industry and not rely on technical documents written in the 1980s and 1990s.

## 2.0 XI. Summary of Proposed NSPS OOOOb and EG OOOOc

### 2.1 A. Fugitive Emissions from Well Sites and Compressor Stations

2.1.1 NDPC is requesting clarification on acceptable methodology for determining a site's fugitive emissions. EPA should allow for any state-approved and/or industry best practices to quantify fugitive emissions.

2.1.2 The EPA seems to be using a different definition for fugitive emissions in this proposal than has been historically used in NSR and Title V. In 40 CFR 70.2, fugitive emissions are defined as "those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening."

In this proposal (page 63169) it is stated that:

"...fugitive emissions are unintended..." and "... *not considered fugitive emissions if the device is operating properly and in accordance with manufacturers specification.*"

NDPC feels these statements are inconsistent and inaccurate. The EPA should consider that not all emissions can reasonably be routed to a control device or back into the process. Technical feasibility should be a consideration and option for any natural gas-driven pneumatic device standard.

### 2.2 B. Storage Vessels

NDPC disagrees with the proposed changes to the definition of modification with respect to storage vessels. EPA is proposing to require certain activities to potentially trigger a modification, but these would include activities that are not a "physical change in, or change in the method of operation of, a stationary source." See 42 U.S.C. § 7411(a)(3). For example, as currently proposed this could include the relocation or replacement of a storage vessel. The definition of modification with respect to storage vessels should remain unchanged to remain consistent with the definition of "modification" under the Clean Air Act. Moreover, the EPA has not demonstrated the necessity of this change nor how its implementation will benefit the environment.

### 2.3 C. Pneumatic Controllers

NDPC takes the position that the pneumatic controller emission factors in 40 CFR 98 overestimated the emissions from this source category and that the EPA's focus on regulating these sources is unwarranted. Leak Detection and Repair programs, as required by subpart OOOOa, states, and voluntary programs, will assure that maintenance of pneumatic controllers is performed promptly.

On existing sources in particular, EPA should allow for the use of low bleed pneumatic controllers under EG OOOOc. This would appropriately balance significant environmental benefits with the multitude of challenges associated with implementing changes to pneumatic controllers for all existing sources. At a minimum, if EPA determines that non-emitting pneumatic controllers should be required under EG OOOOc, it should allow for a phase-in period of at least ten (10) years. Factors such as availability of equipment, personnel capabilities, and location-specific electrification options make it impossible to replace all the emitting pneumatics at sites in any less time.

The NDPC also believes the secondary emissions created by these proposed requirements to make the pneumatic controllers non-emitting (e.g., from manufacturing of new equipment and installation of alternative equipment) could be more significant than what the source emits during its useful life.

### 2.4 D. Well Liquids Unloading Operations

NDPC would like clarification as to if well liquids unloading operations only apply to gas wells as described in 40 CFR 98.

Also, the EPA should only focus regulations on the liquids unloading operations that result in the venting of natural gas.

### 2.5 E. Reciprocating Compressors

NDPC recommends that the EPA should consider a compressor's hours of operation (i.e., 8,760 hours) in lieu of considering the annual review based on a calendar year. There are situations when a compressor may not be in use all the time. This would potentially stagger maintenance activity through the year and avoid having it all done on a calendar basis. As an alternative, EPA should consider requiring reciprocating compressors to be monitored every other calendar year.

Additionally, while it may be cost-effective to regulate larger compressors, it would not be for smaller units. Any benefits that could potentially come from requiring replacement for these smaller compressors would be outweighed by the significant cost.

## 2.6 H. Equipment Leaks at Natural Gas Processing Plants

The NDPC requests that temporary portable natural gas liquid processing skids in the natural gas production sector be exempt from requirements applicable to natural gas processing plants in the natural gas processing sector.

## 2.7 J. Oil Wells with Associated Gas

The NDPC disagrees with EPA's assumption that since there are no New Source Performance Standards (NSPS) that regulate associated gas venting and flaring, that one is therefore needed. There are many emission sources not covered under a NSPS that are regulated through New Source Review and Title V permitting, as well as state air quality and oil and gas rules.

The ratio of associated gas to barrels of oil produced (gas to oil ratio or GOR) can vary significantly from field to field, from no associated gas to thousands of cubic feet of gas per barrel. GOR can also vary with time and be episodic.

Today it is uncommon for associated gas to be vented under normal circumstances for safety reasons, and many state regulations prohibit the venting of natural gas (i.e., those in North Dakota).

There are situations where a production field may have geographic, biological, or cultural boundaries that limit or prohibit linear infrastructure like pipelines and transmission lines from being constructed. In these situations, associated gas would need to be combusted on site if present.

When soliciting comments on what the definition of "access to a sales line" should be, the NDPC reminds the EPA that in most cases, the midstream company that designs, builds, and operates the gas gathering system (sales line) and gas processing plants is not the same as the well owner and operators, landowners, and mineral lease owners. One entity has little control over the other.

## 3.0 Leak Detection and Repair (LDAR)

- 3.1 North Dakota's climate poses many safety and logistical challenges that can limit inspector access to oil and gas locations for days or weeks. Ice, snow, frigid temperatures, and high winds are common occurrences. North Dakota is the coldest state in the Continental U.S. during the winter and fall (source [www.worldatlas.com](http://www.worldatlas.com)), and this year has already seen temperatures below -25 °F and wind speeds greater than 30 mph.

Increasing the frequency of LDAR inspections reduces the window of opportunity a company has to reschedule inspections delayed by bad weather conditions.

Also, some activities at well sites may increase the safety risk to the LDAR Inspector. These activities include but are not limited to well completion, maintenance, construction activities,

or times when a well site is shut-in from production. We do not wish to expose the inspector to any unnecessary safety risks during these times.

There may be periods of time when a facility LDAR inspection must be delayed for the reasons stated above. NDPC would like to see some additional acceptable reasons for delaying inspections added, including:

- Adverse weather conditions
- Unsafe site conditions
- Facility production shut-in

3.2 In general, NDPC supports creating a protocol for OGI camera use, and only referencing the protocol in the rule text. However, there is little in Appendix K that we agree is appropriate, and this overly burdensome approach seems to be inconsistent with other EPA approved methodologies.

As the EPA did in NSPS OOOOa for combustor technology and FLIR cameras, NDPC would like the EPA to issue an approval or certification of a manufacturer's OGI camera. This should not be the responsibility of the end-user.

Our members have been developing and implementing Leak Detection and Repair Programs that have been very effective since the passing of OOOOa. NDPC believes that the proposed protocol in Appendix K is too burdensome, and many of the requirements are unnecessary and presume the process that the industry has followed for OOOOa is inadequate. Our comments on Appendix K are listed below.

## **Appendix K**

### **1.0 Scope and Application**

It does not appear this is an accurate depiction of the OGI camera's Analytes, Scope, and Applicability. NDPC suggests the EPA work with the manufacturers to develop an accurate Section 1.

### **2.0 Summary**

Appendix K appears to only apply to hand-held use of OGI. EPA should allow for content of Appendix K to apply to all applications of OGI including but not limited to fixed mount, drones, or aircraft, etc.) We also suggest that the summary be the first section of the document.

### 3.0 Definitions

In the context of an OGI inspection, the definition of “Ambient Air Temperature” is not accurate. We recommend the EPA reach out to the manufacturers of the OGI camera for concurrence on all technical definitions.

“Dwell time” is not a relevant term or requirement for OGI technology and is more appropriate for Method 21, where the search is focused on a visible leak.

The definition of “Fugitive Emission or Leak” is too broad because there are sources that have emissions that are permitted that will be visible to the OGI camera. This will lead to subjective compliance determinations based on technology that is not a quantification tool. It is inappropriate to include sources that normally emit methane and/or VOC. For malfunctioning equipment, separate requirements should be developed for these emission sources.

The definition of “Senior OGI Camera Operator” is overly conservative. It does not consider the years of experience a camera operator may have in the industry and their understanding of the equipment and processes. Also, knowledge and skill are not lost year to year. NDPC recommends that the minimum level be changed from 500 sites to 40 hours per year. The 40 hours could include any training hours but should have a minimum of 24 hours in the field with the OGI camera.

### 4.0 Interferences

It seems that the EPA is expecting the camera operator to be 100 percent accurate. NDPC believes this is an unreasonable expectation and would recommend consideration of flexibility to allow for human error and situational factors. For example, the greater the inspection frequency, the more likely the camera operator will encounter less than favorable atmospheric conditions. These accuracy factors are built into the inspection frequency.

### 5.0 Safety

While NDPC recognizes that safety is of utmost priority to its members, we believe it is not appropriate to include safety requirements in this protocol and suggest this section be removed. Safety conditions are extensively regulated by other agencies under robust regulatory frameworks. Each company has its own required and voluntary safety programs to address site-specific safety conditions that might be encountered.

### 6.0 Equipment and Supplies

It is NDPC’s understanding that this section applies to manufacturers of OGI technology and suggests it be identified as such. We also ask the EPA to issue certification to companies whose OGI technology complies with this protocol, like the certification provided under OOOOa for FLIR’s GF320, GF300, and G300a cameras.



## 7.0 Camera Calibration and Maintenance

If the regulated company conducts OGI surveys using company personnel, NDPC suggests that the EPA require that the camera calibration and maintenance be addressed in the regulated company's LDAR monitoring plan and should follow manufacturers' recommendations.

## 8.0 Initial Performance Verification and Development of the Operating Envelope

It is NDPC's understanding that this section applies to manufacturers of OGI technology and suggests it be identified as such.

## 9.0 Conducting the Monitoring Survey

Our member companies already have monitoring plans developed for OOOOa. Companies with many locations have one plan that covers all sites, with site specific information included (e.g., walking path). The requirements in Section 9 are onerous and provide limited value in reducing emissions.

Many companies prohibit walking while viewing through the camera for safety reasons. As a result, our camera operators would rarely have a situation that would require them to continuously view through the camera for more than 20 minutes.

The NDPC strongly disagrees with any requirement for recording (i.e., video clip) and saving any activity associated with the inspections (e.g., leaks, quality assurance, etc.). These recording files will require a tremendous amount of storage, provide no value to the operator, and will be a great burden to retrieve, review, and transfer if requested by state agencies or EPA. The EPA does not require other inspections to be recorded (Method 9, 21, and 22), and the NDPC recommends remaining consistent on this requirement.

## 10.0 Camera Operator Training

NDPC generally agrees that there should be a requirement for training and that the training can include manufacturer, third-party, company-specific, or EPA content.

The term "classroom" needs to be defined.

The NDPC generally agrees that key components of the training be listed in the Appendix but does not agree with the key components currently listed in this proposal because some are unnecessary, burdensome, and add little to no value.

The NDPC believes most of the content of 10.0 to be unnecessary and burdensome.

## 11.0 Quality Assurance and Quality Control

NDPC does not agree with the requirements of 11.0 and find them unnecessary and burdensome. Companies should be allowed to define their own Quality Assurance and Quality Control (QA/QC) procedure in their monitoring plans.

In addition, states with primacy of NSPS OOOO and OOOOa, like North Dakota, routinely conduct their own OGI inspections of oil and gas facilities, and this offers an additional layer of QA/QC.

## 12.0 Recordkeeping

NDPC generally agrees that recordkeeping requirements should be clearly stated in the OGI Protocol. However, NDPC believes many of the recordkeeping requirements in Appendix K are unnecessary and burdensome.

## 14.0 Tables, Diagrams, and Flow Charts

It is not clear to NDPC where Table 14-1 came from since there was no source attribution. Without knowing the context of the data presented, it does not appear to be relevant with the inspections that are conducted on a typical well site.

NDPC wants to remind the EPA that most well sites are unmanned and LDAR inspections require trained OGI camera operators. This requires inspectors and maintenance crews that must drive long distances to inspect and repair a leak. These are not the normal operations crews that regularly visit the sites. There are methane and VOC emissions associated with every LDAR inspection (from the vehicles driven by the LDAR inspectors and maintenance crew), even when no leaks are found at the site. One of our members provided the following calculations:

- Well sites inspected = 611
- Frequency = semi-annually
- 80% of the sites had no leaks
- Gallons of gasoline used by inspectors' vehicles = 2,179
- CO<sub>2</sub>e emissions from the inspectors' vehicles = 19.3 MT

The CO<sub>2</sub>e emissions shown above are only for the OGI inspections. Any emissions associated with repairing a leak would be in addition to the inspection. Going from semiannual to quarterly inspections will at least double these emissions from vehicles. With the added complexities of time consuming and burdensome requirements in the Appendix K OGI protocol, this could triple or quadruple the emissions from vehicles when requiring monitoring events that previously took only a couple of hours to taking multiple days to complete. The NDPC is concerned that EPA's attempt to create more stringent requirements will result in greater emissions.

EPA's actions directly impact the oil and gas industry and how it operates in North Dakota. We are committed to operating in a manner that ensures our resources and efforts are used in the most

efficient and effective ways possible. As you review the NDPC comments, we hope you consider that the potential costs of this proposal could significantly outweigh any environmental benefits.

We appreciate your serious consideration of our comments on this proposal, and we hope you will move forward in a measured and thoughtful manner.

Sincerely,

A handwritten signature in black ink that reads "Ron Ness". The signature is written in a cursive style with a large, sweeping initial "R".

Ron Ness  
President, North Dakota Petroleum Council