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February 13, 2023

ATTN: DOCKET ID. No. EPA-HQ-OAR-2021-0317
Via Electronic Submission to <http://www.regulations.gov>

RE: Docket ID. No. EPA-HQ-OAR-2021-0317
Proposed Rulemaking for Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review

Dear Docket Manager:

The Kentucky Division for Air Quality (Division), on behalf of the Kentucky Energy and Environment Cabinet (Cabinet), appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rulemaking for *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review* published in the Federal Register¹ on December 6, 2022.

The Cabinet would like to point out that EPA has proposed a number of significant rulemakings, as well as opened multiple non-regulatory dockets for comment concurrently. Such a large number of proposals and dockets with 30 and 60 day comment periods does not allow a state agency to fully evaluate all proposals. Due to limited resources within the Cabinet, 60 day comment periods on proposals with more than 400 pages of text, and more than 50 different documents in the docket to evaluate is simply not enough time to provide any meaningful comment. In the spirit of shared responsibilities and regulatory partnerships, the Cabinet prefers to provide comment on EPA rulemakings. However, with staff resources limited, it is impossible for the Cabinet to devote necessary resources to fully evaluate all proposals and provide meaningful comment on all aspects of EPA's proposals, while continuing to fulfill our mission of protecting human health and the environment by achieving and maintaining acceptable air quality through operation of a comprehensive air monitoring network, creating effective partnerships with air pollution sources and the public, timely dissemination of accurate and useful information, the judicious use of program resources, and maintenance of a reasonable and effective compliance assurance program.

¹ 87 Fed. Reg. 74702.

Additionally, the Cabinet finds it inappropriate for EPA to bury proposed regulatory text in the docket for state agencies and impacted sources to find on their own. When this language is not proposed as part of the Federal Register text, it has to be found in the docket by any interested party; this makes it even more difficult for meaningful comment as the Division is left piecing together EPA's federal register language and proposed rule text to determine what actual requirements apply.

More specifically, EPA's complicated and piecemeal approach in this proposal has not provided the Division meaningful opportunity to comment on the proposed rulemaking. The Division is unable to fully evaluate the sources and source inventory under this rulemaking as proposed; however, the Commonwealth has estimated approximately 60,000 sources that may become subject to the requirements in the proposed rule. Therefore, without a specific source inventory, EPA provides no data to fully estimate cost impacts and the estimated burden on permitting, enforcement and other programs within the Cabinet. However, with the estimate of 60,000 or more sources that will need to be evaluated to determine the applicability of this proposed rule, the Cabinet would need to add a minimum of 100 staff to evaluate sources, create agency identification numbers, draft permits, and do inspections and monitor compliance. This would simply render the Division being unable to implement the program.

The rulemaking as proposed potentially affects sources that have never been subject to permitting under the Clean Air Act. It is expected that many sources are unfamiliar with air quality regulations, and they will need significant technical assistance in all areas of compliance and permitting. For example, continued monitoring until wells are permanently plugged as proposed in this rulemaking could potentially require years and years of monitoring and oversight by state regulatory agencies. Therefore, EPA must provide additional funding support to state regulatory agencies to provide this additional service.

Many Kentucky oil and gas wells are operated by small business owners. The Division supports EPA exempting very small wells and establishing subcategories of sources for low production wells and small well sites that have less onerous monitoring, recordkeeping and reporting requirements. This will be a benefit to small business entities and to the Division, both of which have limited staffing resources. In addition, EPA could unintentionally incentivize small businesses to abandon low production wells without these exemptions. This would be a lose-lose situation for small businesses and the environment.

In addition, the proposal states that "(t)he EPA believes that this action does not have disproportionately high and adverse human health and environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994)"² yet it is proposing additional meaningful engagement without specific guidance for the States. EPA specifically states that it "intends to propose similar meaningful engagement provisions to this provision under the implementing regulations in a separate upcoming rulemaking that would apply generally to new EG promulgated under CAA section 111(d)."³ Again, this piecemeal approach is not sufficient to allow meaningful comment on this proposed rulemaking. The Division recommends that EPA re-propose the complete rulemaking in its entirety and with full requirements so that the impacts can be evaluated. For example, the newly released Climate and Economic Justice Screening Tool (CEJST) shows that

² 87 Fed. Reg. 74847.

³ 87 Fed. Reg. 74849.

over half of Kentucky census tracts are considered as disadvantaged communities. Asking a state to perform additional ‘meaningful engagement’ with stakeholders in these communities without clearly stating the expectations is inappropriate.

EPA solicits comment on “how meaningful engagement should apply to pertinent stakeholders inside and outside of the borders of the state that is developing a state plan, for example, if a state should coordinate with the neighboring state and/or tribes for engagement or directly contact the affected communities.”⁴ EPA requesting public comment on broad topics of meaningful engagement, as in the above example, does not allow states to evaluate the costs or implications of actual requirements. This is more appropriate for an Advanced Notice of Proposed Rulemaking and not a proposed rule.

States continue to request EPA provide additional clarity on what it means to perform meaningful engagement when EPA provides a model rule for states to adopt as part of the emissions guidelines. As a general rule, a model rule is written regulatory text that a state can adopt (often by reference) into state law.

The Division supports the flexibility of requesting alternate meaningful engagement procedures that in fact provide for adequate notice to and meaningful engagement of the public. The Division already provides regulatory notice to the public throughout the process of any regulatory change through its State Legislature and certain permitting actions. This is especially important where EPA is expanding meaningful engagement procedures in a way that has not been previously required.

The Division requests extending the proposed 18-month state plan submission deadline for several reasons, including but not limited to, the volume of sources, limited air regulatory experience of sources, time necessary to create an accurate source inventory, proper notification to those sources and information requests from sources, meaningful engagement and public participation, and any regulatory changes that would be necessary before submitting a state plan. Additional time is also necessary if EPA does not propose a Model Rule. All these factors should be considered by EPA in extending the deadline for state plan submissions to a minimum of 24 months after a final emission guideline is published.

Sincerely,

 Recoverable Signature

X 

Signed by: Michael Kennedy

Michael Kennedy, P.E., Director
Kentucky Division for Air Quality

⁴ 87 Fed. Reg. 74830.