



*Empowerment Programs*

February 13, 2023

*Via Electronic Submission through the Federal eRulemaking Portal and email*

**Re: NAACP Comment regarding Docket ID No. EPA-HQ-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**

Michael S. Regan, Administrator  
c/o Sector Policies and Programs Division (E143-05)  
Office of Air Quality Planning and Standards  
U.S. Environmental Protection Agency  
Research Triangle Park, North Carolina 27711

Dear Mr. Regan:

The NAACP submits the following comments regarding the proposed standards of performance for new, reconstructed, and modified sources and emissions guidelines for existing sources. As outlined below, this is an opportunity to ensure that the proposed rules help the communities most impacted. The NAACP Center for Environmental and Climate Justice appreciates the opportunity to comment and offer recommendations.

The Environmental Protection Agency (EPA) is issuing this supplemental proposal based on its November 2021 proposed rule to ensure that it reduces emissions and greenhouse gases. The EPA has shared this supplemental action to gather comments regarding ways to strengthen and update the proposed rule under the Clean Air Act sections 111(b) and (d). This would allow for better protections against methane and volatile organic compounds (VOC) emissions in new, modified, and reconstructed facilities, as well as establishing the implementation requirements for states to limit methane pollution. This comment period comes during the time where the EPA has promised to prioritize environmental justice within its policies and procedures.

As the NAACP stated in its report “Fumes across the Fence-Line”, the oil and gas industry dumps nearly nine million tons of methane and toxic pollutants into the air each year and methane is one of the most

harmful greenhouse gas from the oil and gas industry.<sup>1</sup> Black communities continue to live close to natural gas facilities and will continue to have a higher cancer risk without pollutant levels being mitigated through the operation of this proposed rule. The time is now for the EPA to boldly create regulations that ensure swift action, timely responses, and more accountability in creating better protections in Black and underserved communities regarding emissions and greenhouse gases.<sup>2</sup>

**Communities must continue to have the ability to monitor pollution in their communities.**

Although previous iterations of the proposed rule in November 2021 ensured that communities retained the ability to monitor methane and other emissions, we have concerns that the December 2022 version of the rule weakens that ability.<sup>3</sup> We request that the EPA ensure and strengthen the operation of community monitoring of methane and other emissions.

**The timeline is too long between the notification of a high level of pollution within a community and responsive action.**

As it stands, communities can be poisoned with greenhouse gas pollution under the super-emitter program for up to five days prior to any root cause analysis and up to ten days for any corrective action to take place.<sup>4</sup> Under the proposed rule, an owner has discretion once notified of emissions over 100 kg/hour (2.4 tons/day) as to whether they want to act immediately or wait several days to take corrective actions.

For every hour of emissions, the atmosphere is harmed and neighboring communities are at risk of an explosion. As outlined in the NAACP report, air in many Black communities already violates various air quality standards and at least 6.7 million Black people live near oil refineries. Allowing an extensive time period to respond to these crises implicates racial justice issues and runs counter to the promise of environmental justice promised by the Biden Administration. Communities should not have to suffer due to the lack of emergency planning by owners and operators. The regulations must outline the need for owners to have competent emergency help or face accountability actions by the EPA. Additionally, if the equipment had a visible fire or chlorine leak, the EPA should expect owners to start addressing it within an hour, and have resources prepositioned to do so. Resolution of the crisis must take place, generally, within ten hours.

***There are several other places where the proposed rule allows for additional time to act or no action, when communities face continued exposure to high levels of these emissions for an extended period:***

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<sup>1</sup> “Fumes across the fence-line, The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities” NAACP, Nov. 2017, available at <https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american>.

<sup>2</sup> Our comments reference this document. Subpart OOOOb—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After November 15, 2021, available at [https://www.epa.gov/system/files/documents/2022-11/8510\\_OilandGasClimate\\_OOOObRegText\\_Supplemental\\_20221005.pdf](https://www.epa.gov/system/files/documents/2022-11/8510_OilandGasClimate_OOOObRegText_Supplemental_20221005.pdf).

<sup>3</sup> Subpart OOOOb—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After November 15, 2021, available at [https://www.epa.gov/system/files/documents/2022-11/8510\\_OilandGasClimate\\_OOOObRegText\\_Supplemental\\_20221005.pdf](https://www.epa.gov/system/files/documents/2022-11/8510_OilandGasClimate_OOOObRegText_Supplemental_20221005.pdf).

<sup>4</sup> Proposed Rule P.23 - 40 CFR 60.5371b(c).

- For issues that need extra time, the rule should require a corrective action plan within three days, not 30 days.<sup>5</sup>
- For notices about emissions below 100 kg/hour, the rule proposes that owners “are not required to take the actions.”<sup>6</sup> At a minimum, the rule should require owners to correct emissions before a ton of methane escapes. Good facilities run well within the limits. Any excess found should be corrected. This involves changing “rate of 100 kg/hr of methane or greater” to “rate higher than allowed by the Rule”, and in (c) “10 calendar days” to “10 hours or before a ton of methane escapes, whichever is longer”.
- An approved notifier can lose its approval if it reports a site four times with “demonstrable error.” Proving errors is itself subject to error, so this rule chills reports after the first three occurrences, which leaves future years unreported. EPA should change “more than three notices” in the rule, to “more than one notice per month” or “more than three notices per half-year.”<sup>7</sup>

**Notifiers do important work in ensuring communities have information as quickly as possible regarding emissions and should be rewarded.**

Notifiers deserve rewards for their costly work, which should be at least \$10,000 per event, or the methane charge of \$900/ton.<sup>8</sup> In this paragraph of the rule, there is no mention of monetary reward, despite payment that will be made soon regarding methane charges. The paragraph should insert additional framing regarding monetary reward. This can include language stating “The owner or operator shall send a copy of the notification to the notifier(s) who notified this event and make a payment of \$10,000 divided equally among them. When the Administrator receives the methane charge for the event, the Administrator in turn shall pay the methane charge for the event, to the notifier(s), divided equally; to the extent it exceeds \$10,000. The notification shall include the requirements in paragraphs (e)(1)(i) through (iv) of this section.”

**Nothing is normal regarding high levels of emissions and more defined language is required to explain documentation of emissions.**

Lastly, “normal operations” should never involve emissions over 100 kg/hour, so the proposed rule should remove this framing in section (c)(8) except for emissions under 100 kg total.<sup>9</sup> This would change the current language of “Documentation that emissions were the result of allowed venting of emissions as part of normal operations, including routine maintenance (if applicable)” to “Documentation that emissions under 100kg total were the result of allowed venting of emissions as part of normal operations, including routine maintenance (if applicable).” This change clarifies that corrections under this program do not constitute “compliance” to earn any exemptions from the methane charge for those excess emissions.

We believe these are some of the most critical changes needed to ensure that communities are prioritized and centered in these important decisions regarding emissions that will impact NAACP members, Black,

<sup>5</sup> Proposed Rule, P.25 - 40 CFR 60.5371b(d).

<sup>6</sup> Proposed Rule, P.20 - 40 CFR 60.5371b.

<sup>7</sup> Proposed Rule, P.21 - 40 CFR 60.5371b(a)(4).

<sup>8</sup> Proposed Rule, P.25 - 40 CFR 60.5371b(e)(1).

<sup>9</sup> Proposed Rule P.24 - 40 CFR 60.5371b(c)(8).

and underserved communities. We are available to answer additional questions or share additional thoughts as needed.

Sincerely,

*Abre' Conner.*

Abre' Conner, Esq.

Director, Center for Environmental and Climate Justice, NAACP