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June 29, 2017

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RE: Clean Air Act Notice of Intent to Sue for Failure to Establish Guidelines for Standards of Performance for Methane Emissions from Existing Oil and Gas Operations under Clean Air Act Section 111(d)

Dear Administrator Pruitt:

The States of New York, California, Connecticut, Illinois, Iowa, Maine, Maryland, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, the City of Chicago, and the California Air Resources Board, respectfully request that the Environmental Protection Agency (EPA) remedy its failure under the Clean Air Act to establish guidelines for limiting methane emissions from existing sources in the oil and natural gas sector. EPA has determined that emissions of this potent greenhouse gas endanger public health and welfare, and that sources in the oil and natural gas sector are the largest industrial emitters of methane in the United States. In June 2016, pursuant to its authority under section 111(b) of the Clean Air Act, EPA promulgated standards to reduce methane emissions from new, reconstructed, and modified sources in the oil and natural gas sector. *See* Oil and Natural Gas Sector Emission Standards for New, Reconstructed and Modified Sources, 81 Fed. Reg. 35,824 (June 3, 2016) (New Source Rule). EPA's regulation of new sources triggered its mandatory obligation under section 111(d) of the Clean Air Act to issue guidelines for limiting methane emissions from existing sources in this category.

It has now been over one year since EPA promulgated the New Source Rule—and four-and-a-half years since New York and other states formally notified EPA that it was in violation of the Clean Air Act[1]—and yet EPA has failed to establish existing source guidelines. Instead, EPA recently unilaterally withdrew the Final Methane Information Collection Request (ICR) for the Oil and Natural Gas Industry, EPA ICR No. 2548.01, which sought information that EPA has said would be of "critical use in addressing existing source emissions." 81 Fed. Reg. 66,962 (Sept. 29, 2016). EPA's ongoing failure to address existing source methane emissions from the oil and gas sector, which accounts for the lion's share of methane emissions from oil and gas operations (an estimated 90 percent by 2018), violates the Clean Air Act and harms the health and welfare of our residents. Therefore, unless EPA promptly remedies this failure, the undersigned states intend to file suit at the expiration of the required notice period.

I. Background

Climate disruption from rising greenhouse gas concentrations is increasingly taking a toll on American families and businesses. Climate change is threatening more and more Americans with more frequent, severe or long-lasting extreme events, such as droughts, heat waves and wildfires, and flooding from sea-level rise, which will intensify over the coming decades. *See generally, Our Changing Planet*, U.S. Glob. Change Research Program for FY 2017, at 2. Methane is a very potent greenhouse gas – when including feedbacks, it warms the climate about thirty-four times more than carbon dioxide over a 100-year period, according to the Intergovernmental Panel on Climate Change, and on a twenty-year timeframe, it has about eighty-six times the global warming potential of carbon dioxide. EPA determined in its 2009 endangerment finding that methane is one of six well-mixed greenhouse gases that endanger public health and welfare. *See Endangerment and Cause of Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009). Major scientific assessments since the 2009 Endangerment Finding have confirmed and strengthened the conclusion that greenhouse gases, including methane, endanger public health and welfare. *See* 81 Fed. Reg. at 35,834. Combined, oil and natural gas systems are the largest source of methane emissions in the U.S. and the second largest industrial source of U.S. greenhouse gas emissions behind only electric power plants. *See id.* at 35,838. EPA must fully comply with its legal obligations under the Clean Air Act to regulate emissions that endanger public health and welfare by controlling this significant source of dangerous greenhouse gas pollution.

Section 111(b) of the Clean Air Act requires EPA to establish standards of performance governing the emission of air pollutants from new sources (NSPS) in a source category and to review, and if appropriate, revise, those standards at least every 8 years. *See* 42 U.S.C. § 7411(b)(1)(B). Section 111(d) of the Act and EPA's regulations also require EPA to issue emission guidelines covering any air pollutant from any existing oil and natural gas operations for which NSPS have been issued. *See id.* § 7411(d). EPA's regulations provide that such guidelines will be issued "[c]oncurrently upon or after proposal of [section 111(b)] standards of performance for the control of a designated pollutant from affected facilities." 40 C.F.R. § 60.22(a).

EPA listed crude oil and natural gas production as a source category that contributes significantly to air pollution that may reasonably be anticipated to endanger public health and welfare in 1979. *See Priority List and Additions to the List of Categories of Stationary Sources*, 44 Fed. Reg. 49,222 (Aug. 21, 1979). EPA originally promulgated standards of performance for the oil and natural gas sector in 1985. The 8-year deadline for reviewing these standards expired in 1993. EPA failed timely to review the

[1] *See* Clean Air Act Notice of Intent to Sue Letter to Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency, from New York, Connecticut, Delaware, Maryland, Massachusetts, Rhode Island, and Vermont (Dec. 11, 2012) (States' 2012 Notice of Intent to Sue Letter), attached hereto as Exhibit 1.

standards of performance, leading multiple groups to file suit in 2009 to compel such review. That case, *Wild Earth Guardians v. EPA*, No. 1:09-CV-00089 (D.D.C.), resulted in a consent decree setting forth a schedule for proposing any final revisions by November 30, 2011. EPA proposed revisions to the oil and natural gas NSPS in August 2011, 76 Fed. Reg. 52,738 (Aug. 23, 2011), and signed a final rule to complete the mandated review for oil and natural gas operations on April 17, 2012. 77 Fed. Reg. 49,490 (Aug. 16, 2012) (2012 Rule). However, despite previously determining in 2009 that methane and other greenhouse gases endanger public health and welfare, EPA did not establish performance standards or emission guidelines for methane emissions from this industrial sector in the 2012 Rule.

In December 11, 2012, New York, Connecticut, Delaware, Maryland, Massachusetts, Rhode Island, and Vermont notified EPA of their intent to sue the agency for violating the Clean Air Act by failing to adopt limits on methane emissions from equipment used in oil and natural gas production, processing, and transmission in the 2012 Rule. *See* States' 2012 Notice of Intent to Sue Letter, Ex. 1. As explained in our notice letter, EPA had determined that emissions of this potent greenhouse gas endanger public health and welfare, and that processes and equipment in the oil and natural gas sector emit vast quantities of methane. We further explained that EPA had compelling data, including from eighteen years of experience administering the Natural Gas Star Program, demonstrating that many measures to avoid (or reduce) methane leaks from new and existing oil and natural gas operations are available and cost-effective. In light of these findings, EPA's failure to determine in its 2012 rulemaking whether standards limiting methane emissions from oil and natural gas operations under section 111 of the Clean Air Act were appropriate was a violation of a nondiscretionary duty of the Administrator and constituted an unreasonable delay in taking agency action.

In June 2013, then-President Obama issued a Climate Action Plan that, among other things, committed his administration to developing a comprehensive, interagency strategy to reduce methane emissions. That strategy, released in March 2014, committed EPA to a number of activities, including assessing significant sources of methane and other emissions from the oil and natural gas sector, soliciting input from independent experts through a series of technical white papers, and determining how best to pursue further methane reductions from these sources. Many of the undersigned Attorneys General filed comments on the EPA white papers advocating for the direct regulation of methane from new and existing oil and natural gas development and delivery equipment. Because of EPA's actions demonstrating progress in addressing these sources, many of the undersigned also held the filing of a lawsuit in abeyance.

In September 2015, EPA proposed regulations to require new and modified equipment to meet standards to limit their methane emissions. 80 Fed. Reg. 56,593 (Sept. 18, 2015). Many of the undersigned Attorneys General submitted comments on the proposed standards for new and modified sources, and further urged EPA to move forward expeditiously with regulation of existing sources, which is mandated under the Clean Air Act once a rule on new and modified sources is finalized. In June 2016, EPA published notice of the New Source Rule, 81 Fed. Reg. 35,824, promulgating final performance standards for methane emissions from new and modified oil and natural gas sources.

EPA has not yet fulfilled its mandatory obligation under the Clean Air Act to issue guidelines for the control of methane emissions from existing oil and natural gas sources. Consequently, unless EPA takes the required actions by the end of the notice period, we intend to bring a suit in federal district court against you as EPA administrator and EPA for the agency's failure to perform the non-discretionary duty outlined in 42 U.S.C. § 7411(d) and 40 C.F.R. § 60.22(a), and for the agency's unreasonable delay in the performance of this duty. *See Environmental Defense Fund v. Thomas*, 870 F.2d 892, 897 (2d Cir. 1989); *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 194 (D.C. Cir. 2011). This letter provides notice as required under section 304 of the Clean Air Act, 42 U.S.C. § 7604, and 40 C.F.R. part 54. The suit will seek injunctive and declaratory relief, the costs of litigation, and may seek other relief.

II. EPA Failed to Perform Its Non-Discretionary Duty to Establish Emissions Guidelines.

Section 111(d) of the Clean Air Act requires EPA to address methane emissions from existing sources, once EPA establishes standards for new and modified facilities in such source category. 42 U.S.C. § 7411(d)(1)(A). The Act requires EPA to establish procedures under which each state submits to the agency a plan to adopt, implement, and enforce standards of performance for existing sources for certain pollutants. *Id.* § 7411(d). The existing source requirements apply to those pollutants, such as methane, that have not been identified as criteria pollutants or regulated as hazardous air pollutants, but that are regulated under the new source performance standards for a category of sources. *Id.* § 7411(d)(1). Thus, the Act creates a direct connection between the new source standards and those to be developed for existing sources.

EPA's issuance of standards of performance for methane emissions from new oil and natural gas sources triggered the agency's duty to propose guidelines for states to develop plans to limit methane emissions from existing sources under section 111(d). 42 U.S.C. § 7411(d); 40 C.F.R. § 60.21(a).[2] The series of statutory deadlines for promulgating new source performance standards in section 111(b)—including the requirements that EPA propose a NSPS one year after listing a source category, finalize the NSPS within one year of proposal, and review, and as necessary, revise, the NSPS every eight years—indicate that Congress intended EPA to move forward expeditiously with emission guidelines for existing sources under section 111(d). Because the process for submitting and approving state plans to adopt and implement EPA's section 111(d) emission guidelines usually takes several years, delayed issuance of the guidelines could quickly result in an overlap between state compliance with the guidelines and EPA's next mandatory eight-year review. Thus, the statutory structure evidences congressional intent for EPA to proceed promptly with proposed emission guidelines concurrently or shortly after finalizing a rule under section 111(b). Indeed, EPA has routinely used that approach when section 111(d) guidelines were required, most recently with the simultaneous promulgation of its emission standards and guidelines for emissions of landfill gas, including methane, from municipal solid waste landfills, and for carbon dioxide emissions from power plants. *See* 81 Fed. Reg. 59,332 & 81 Fed. Reg. 59,276 (Aug. 29, 2016) (simultaneous standards of performance and emission guidelines for municipal solid waste landfills); 80 Fed. Reg. 64,510 & 80 Fed. Reg. 64,662 (Oct. 23, 2015) (same for electric utility generating units); *see also* 62 Fed. Reg. 48,348 (Sept. 15, 1997) (same for hospital/medical/infectious waste incinerators); 61 Fed. Reg. 9905 (Mar. 12, 1996) (same for municipal solid waste landfills); 60 Fed. Reg. 65,387 (Dec. 19, 1995) (same for municipal waste combustors).

The need for EPA to proceed promptly with the regulation of existing sources is especially important because the lion's share of emissions from this sector comes from existing equipment. According to a recent analysis, sources in existence prior to 2012 are projected to be responsible for up to ninety percent of the methane emissions in the oil and natural gas sector in 2018. ICF Int'l, Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries 1 (2014).[3] This study further found that industry could cut emissions forty percent below the projected 2018 levels at an average annual cost of less than one cent per thousand cubic feet of natural gas produced. Taking into account the total economic value of the natural gas that would be recovered

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[2] EPA's unlawful administrative stay of the New Source Rule pending reconsideration, *see* 82 Fed. Reg. 25,730 (June 5, 2017), currently is being challenged in *Clean Air Council v. Pruitt*, No. 17-1145 (D.C. Cir.), and in no way obviates EPA's obligation under section 111(d) to issue guidelines for existing sources. Further, EPA's proposed rules to implement additional stays of the New Source Rule are without authority and similarly cannot forestall EPA's obligation under section 111(d).

[3] *Available at* https://www.edf.org/sites/default/files/methane_cost_curve_report.pdf.

through the use of additional emission controls, this forty percent reduction would yield savings of over $100 million dollars per year for the U.S. economy and consumers.

States have demonstrated that it is possible to cost-effectively control methane emission from both new and existing oil and natural gas operations. In the absence of federal action, a number of states—including Colorado, Pennsylvania, Ohio, Wyoming, and California—have proceeded with regulations or other legal requirements to prevent leaks from the oil and gas sector. Colorado's rules, passed in February 2014, govern both new and existing wells and require leak inspections either monthly, quarterly, or annually, depending on the size of the emissions. These regulations, which target methane emissions directly rather than as a co-benefit resulting from coincident reductions of other pollution from oil and natural gas operations, are expected to reduce methane emissions by approximately 65,000 tons per year. California's regulation, approved by the California Air Resources Board in March 2017, requires quarterly monitoring and repairing of methane leaks from both onshore and offshore oil and natural gas wells, natural gas processing facilities, compressor stations, and other equipment used in the processing and delivery of oil and natural gas, and requires oil and gas operators above a certain size to implement vapor recovery systems that will capture methane so that it can be reused. California's rules seek to curb methane emissions at oil and natural gas production facilities by up to 45 percent over the next nine years.[4] However, even with these robust state efforts, EPA action is needed, and indeed required under the Clean Air Act, to ensure strong, uniform federal guidelines for existing sources, especially in states with no such backstop programs.

In recognition of its obligation under the Clean Air Act to issue existing source guidelines, on the same day that it issued the New Source Rule, EPA published notice that it would be issuing an information collection request (ICR) to obtain "more specific information that would be of critical use in addressing existing source emissions pursuant to CAA section 111(d)." 81 Fed. Reg. 35,763, 35,764 (June 3, 2016). After two rounds of notice and comment and review by the Office of Management and Budget, resulting in narrower requests for information and lower compliance costs, EPA issued the Final Methane ICR on November 10, 2016. The ICR had two parts: (1) an operator survey, designed to obtain basic information from onshore oil and gas facilities to better understand the number and types of equipment at production facilities; and (2) a facility survey, sent to select oil and gas facilities to obtain more detailed information on sources of methane emissions and emissions control devices or practices. EPA began receiving the requested information from oil and gas operators beginning in January 2017. However, on March 2, 2017, without any notice or opportunity for comment, EPA withdrew the Final Methane ICR. 82 Fed. Reg. 12,817 (Mar. 7, 2017).

EPA's hasty withdrawal of the Final Methane ICR lacked any rational basis.[5] Moreover, EPA's mandatory statutory obligation to issue guidelines covering methane emissions from existing facilities in the oil and natural gas sector remains. Indeed, even without the ICR, EPA has substantial and sufficient information regarding the sources of emissions and pollution control technologies and practices for reducing methane emissions at existing oil and natural gas operations. For instance, through the voluntary Natural Gas Star Program, EPA has worked with oil and natural gas companies for decades to develop

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[4] New York is also moving ahead to develop, propose and adopt, as necessary, regulations to limit emissions from existing oil and gas transmission facilities, such as compressor stations, not regulated by the federal New Source Rule. *See* New York Methane Reduction Plan (May 2017), *available at* http://www.dec.ny.gov/docs/administration_pdf/mrpfinal.pdf.

[5] *See* Letter re Withdrawal of Final Methane ICR to Scott Pruitt, Administrator, from Massachusetts, California, District of Columbia, Illinois, Maine, Maryland, New York, Rhode Island, and Vermont (Apr. 3, 2017), attached hereto as Exhibit 2.

expertise in more than 100 cost-effective technologies and practices to reduce methane emissions.[6] EPA also has a vast amount of scientific and technical data on emissions and control strategies developed over the last several years, including from its white papers, the Greenhouse Gas Reporting Program, and its 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry.[7]

In sum, EPA's continuing failure, more than a year after promulgating the New Source Rule, to publish guidelines covering methane emissions from existing facilities in the oil and natural gas sector is contrary to section 111(d) of the Clean Air Act and the regulations implementing that section. *See* 42 U.S.C. § 7411(d); 40 C.F.R. § 60.22(a). We are therefore providing notice that we intend to sue you as EPA administrator and EPA for the agency's failure to take this non-discretionary action.

III. EPA Has Unreasonably Delayed Establishing Emissions Guidelines.

As set forth above, section 111(d) and 40 C.F.R. § 60.22(a) impose a non-discretionary duty to establish emissions guidelines covering existing sources. In addition, EPA has unreasonably delayed taking action on methane emissions from existing sources in the oil and natural gas sector.

EPA has published annual sector-by-sector inventories of U.S. greenhouse gas emissions since 1997, quantifying emissions since 1990.[8] Therefore, EPA has known since at least 1997 that oil and natural gas operations are one of the nation's largest methane sources. Similarly, EPA has long had ample data on cost-effective measures for controlling methane emissions from these sources. For example, EPA has been implementing the Natural Gas STAR Program, a voluntary public-private partnership with the oil and natural gas industry, since 1993. In 2008, EPA explained that through STAR Program, "many of [the] technologies and management practices" available to control methane emissions from the sector "have been well documented (including information on cost, benefits and reduction potential) and implemented in oil and gas systems throughout the U.S." EPA, Office of Air and Radiation, Technical Support Document for the Advanced Notice of Proposed Rulemaking for Greenhouse Gases; Stationary Sources, Section VII at 30 (June 2008). EPA has been assessing the significant emissions of methane from oil and natural gas operations and evaluating actions to address those emissions since at least 2011. *See* Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Proposed Rule, 76 Fed. Reg. 52,738, 52,756 (Aug. 23, 2011) ("[a]lthough this proposed rule does not include standards for regulating [methane emissions], we continue to assess these significant emissions and evaluate appropriate actions for addressing these concerns.")

Notwithstanding the detailed information EPA already has in its possession, the agency has unreasonably delayed establishing emissions guidelines for controlling methane emissions from existing oil and natural gas sector sources. *See* States' 2012 Notice of Intent to Sue Letter, Ex. 1. EPA's unreasonable delay in issuing these guidelines in turn delays both the date by which states must submit plans for the control of methane from existing oil and natural gas operations, 40 C.F.R. § 60.23(a), and the date by which existing sources must comply with approved pollution control standards, *see id.* § 60.24(c). Therefore, we are also providing a 180-day notice that we intend to sue you as EPA

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[6] *See* https://www.epa.gov/natural-gas-star-program/recommended-technologies-reduce-methane-emissions.

[7] *See, e.g.,* https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/2016-control-techniques-guidelines-oil-and.

[8] Links to each annual GHG emissions inventory are at https://www.epa.gov/ghgemissions/us-greenhouse-gas-inventory-report-archive and https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2015.

administrator and EPA for EPA's unreasonably delaying final agency action to issue emissions guidelines for methane emissions from existing oil and natural gas operations.

IV. Conclusion

EPA's issuance of the New Source Rule recognized that methane emissions endanger public health and welfare and that oil and natural gas operations account for a large share of methane emissions, and pointed to the urgent need to reduce these emissions from existing sources. The agency's long experience identifying successful control strategies that prevent wasting methane via leaks or that recover methane from oil and gas operations for productive uses confirms that there are cost-effective measures for this source category that would provide an appropriate basis for establishing guidelines for limiting methane emissions from existing sources. But EPA's failure to make progress in issuing such guidelines demonstrates that litigation may be needed to prompt the required agency action. Accordingly, the States of New York, California, Connecticut, Illinois, Iowa, Maine, Maryland, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, the City of Chicago, and the California Air Resources Board, give notice of their intent to sue for EPA's failure to complete the emissions guidelines for existing sources required by section 111(d) of the Clean Air Act and EPA's regulations at 40 C.F.R. § 60.22(a) and for the agency's unreasonable delay in the completion of that action.

We are willing to explore any effective means of resolving this matter without the need for litigation. However, if we do not hear from you within the applicable time periods provided in section 304 of the Act, we intend to file suit in United States District Court.

Very truly yours,

FOR THE STATE OF NEW YORK

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By: Morgan Costello

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Vermont Attorney General William H. Sorrell

December 11, 2012

Lisa P. Jackson
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Washington, DC 20460

RE: Clean Air Act Notice of Intent to Sue for Failure to Determine Whether Standards of Performance Are Appropriate for Methane Emissions from Oil and Gas Operations, and to Establish Such Standards and Related Guidelines for New and Existing Sources

Dear Administrator Jackson:

The States of New York, Connecticut, Delaware, Maryland, Rhode Island, and Vermont, and the Commonwealth of Massachusetts, respectfully request that the Environmental Protection Agency remedy its failure under the Clean Air Act to set performance standards for new sources and guidelines for existing sources that curb emissions of methane from the oil and gas sector. EPA has determined that emissions of this potent greenhouse gas endanger public health and welfare, and that processes and equipment in the oil and gas sector emit vast quantities of methane. Moreover, EPA has compelling data, including from 18 years of experience administering the Natural Gas Star Program, demonstrating that many measures to avoid (or reduce) methane emissions from new and existing oil and gas operations are available and cost-effective. Despite these findings, EPA has missed the applicable deadline for determining whether standards and guidelines limiting methane emissions from oil and gas operations under section 111 of the Clean Air Act are appropriate and for issuing such standards. EPA's ongoing failure to address the sector's methane emissions violates the Clean Air Act and harms the health and welfare of our residents.

I. Background

From severe droughts and heat waves to a string of devastating storms in the northeast over the last two years, it is becoming ever more apparent that increasing greenhouse gas pollution contributes to climate disruption in the U.S. and around the globe. Methane is a very potent greenhouse gas -- pound for pound, it warms the climate about 25 times more than carbon dioxide. EPA has found that the impacts of climate change caused by methane include "increased air and ocean temperatures, changes in

precipitation patterns, melting and thawing of global glaciers and ice, increasingly severe weather events, such as hurricanes of greater intensity and sea level rise." 77 Fed. Reg. 49,490, 49,535 (Aug. 23, 2011). Oil and gas systems are the largest source of methane emissions in the U.S. and the second largest industrial source of U.S. greenhouse gas emissions behind only electric power plants. For example, methane emissions from this sector make almost one-fifth of the contribution to climate change that carbon dioxide emissions from coal-fired power plants do. EPA must fully comply with its legal obligations under the Clean Air Act to regulate emissions that endanger public health and welfare by controlling this significant source of dangerous greenhouse gas pollution.

Section 111 of the Clean Air Act requires EPA to establish standards of performance governing the emission of air pollutants from new sources in the oil and gas sector and to review, and if appropriate, revise, those standards at least every 8 years. *See* 42 U.S.C. § 7411(b)(1)(B). As part of this 8-year review, EPA had a mandatory duty (1) to make a determination whether standards covering methane emissions are "appropriate," and, (2) if it is appropriate, to promulgate standards. The Act and EPA's regulations also require EPA to issue emission guidelines covering the release of methane from any existing oil and gas operations for which standards of performance have been issued. *See id.* § 7411(d); 40 C.F.R. § 60.22(a).

EPA originally promulgated standards of performance for the oil and gas sector in 1985. The 8-year deadline for reviewing these standards expired in 1993. EPA finally signed a rule to complete the mandated review for oil and gas operations on April 17, 2012. 77 Fed. Reg. 49,490 (Aug. 16, 2012). However, although the agency revised the standards for several pollutants, EPA did not make the required appropriateness determination regarding methane, nor did EPA establish performance standards or emission guidelines for methane emissions from this industrial sector.

Consequently, unless you promptly correct these failures, we intend to file suit in federal district court against you as EPA administrator and EPA for failures to timely:

(1) make the required determination whether standards of performance limiting methane emissions from oil and gas sources are appropriate and, if so, failing to timely issue revised performance standards limiting methane emissions from this source category; and

(2) issue emissions guidelines for the control of methane emissions from existing oil and gas sources.

Jurisdiction to adjudicate and enforce the Administrator's failure to carry out non-discretionary duties lies with the district court under section 304 of the Act. *See Environmental Defense Fund v. Thomas*, 870 F.2d 892, 897 (2d Cir. 1989); *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 194 (D.C. Cir. 2011). This letter provides notice as required under section 304 of the Clean Air Act, 42 U.S.C. § 7604, and 40 C.F.R. part 54. Unless EPA takes the required actions by the end of the applicable notice period, we intend to bring a suit for EPA's failure to perform the non-discretionary duties outlined in 42 U.S.C. §§ 7411(b)(1)(B), 7411(d), and 40 C.F.R. § 60.22(a), and for the agency's unreasonable delay in the performance of these duties. The suit will seek injunctive and declaratory relief, the costs of litigation, and may seek other relief.

II. EPA Failed to Perform Its Non-Discretionary Duties to Determine Whether Standards of Performance for Methane Are Appropriate and, if so, to Establish Such Standards and Related Emissions Guidelines.

Section 111 of the Clean Air Act requires EPA to establish "standards of performance" for emissions of air pollutants from categories of new, modified, and existing sources. After EPA sets initial

standards of performance for a listed category, section 111(b)(1)(B) imposes a timetable for EPA to review and revise those standards: "The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by the subsection for promulgation of such standards." 42 U.S.C. § 7411(b)(1)(B). EPA failed timely to review the standards of performance that it initially established in 1985 for sources in the oil and gas sector, leading multiple groups to file suit in 2009 to compel such review. That case, *Wild Earth Guardians v. EPA*, No. 1:09-CV-00089 (D.D.C.), resulted in a consent decree setting forth a schedule for proposing any final revisions by November 30, 2011.

In August 2011, EPA proposed revisions to the oil and gas NSPS. 76 Fed. Reg. 52,738 (Aug. 23, 2011). EPA did not propose any standards for methane emissions, despite previously determining that methane and other greenhouse gases endanger public health and welfare. 74 Fed. Reg. 66,496 (Dec. 15, 2009). Numerous organizations submitted comments on the proposed rule stating that EPA was required, as part of its mandated 8-year statutory review, to determine whether it was "appropriate" to add standards of performance for additional, previously-unregulated pollutants, such as methane, and, if so, to revise them accordingly.

EPA signed a final rule revising some aspects of the oil and gas standards on April 17, 2012, which was published in the Federal Register on August 16, 2012. 77 Fed. Reg. 49,490. EPA failed to determine whether it is appropriate to establish methane standards. Instead, EPA stated that "[i]n this rule, we are not taking final action with respect to regulation of methane. Rather, we intend to continue to evaluate the appropriateness of regulating methane with an eye toward taking additional steps if appropriate." *Id.* at 49,513. The agency further stated that "over time," it would assess emissions data received pursuant to the recently implemented greenhouse gas emissions reporting program, but set forth no timetable for taking final action to address methane emissions. *Id.*

EPA's failure to decide one way or another within the 8-year statutory review deadline whether it is appropriate to revise the oil and gas NSPS to regulate methane emissions violates section 111(b)(1)(B) of the Clean Air Act. That section imposes a clear-cut nondiscretionary duty of timeliness that requires EPA to make a decision within the 8-year review period whether it is "appropriate" to revise the standards to regulate methane, regardless of whether the substance of that decision is discretionary. The Second Circuit Court of Appeals in *Thomas*, 870 F.2d at 900, held that substantially similar language contained in section 109(d) of the Clean Air Act -- which provides that, at five-year intervals, EPA "shall complete a thorough review" and "promulgate such new standards as may be appropriate"-- imposed a nondiscretionary duty to make a decision. In that case, like here, EPA had declined to make any formal decision to either revise or decline to revise the standards for a specific pollutant. EPA argued that its non-decision was unreviewable by the D.C. Circuit under section 307 because it involved no decision or other agency "action" and was also not subject to challenge in district courts under section 304 because it was discretionary." *Id.* at 896. The Court rejected EPA's argument, holding that EPA may not leave the matter "in a bureaucratic limbo subject neither to review in the District of Columbia Circuit nor to challenge in the district court. *Id.* at 900. While the Court agreed that the "as may be appropriate" language of section 109(d) provided EPA with discretion to determine whether revision was appropriate and what the substance of those revisions should be, the presence of the language "shall complete" and "required" in that section implied that the district court "has jurisdiction to compel the Administrator to make *some* formal decision whether or not to revise the [standards]." *Id.*

Here, section 111(b)(1)(B) contains the mandatory term "shall" -- which applies to both of the verbs "review" and "revise"-- and a clear-cut statutory deadline of "at least every 8 years." Because EPA cannot make any revisions without first completing its review, the language requires EPA to both complete the review and make the revisions within the 8-year review period. Therefore, a district court

has jurisdiction to compel EPA to make a determination one way or another as to whether revision of the oil and gas NSPS is appropriate and to issue any revision it determines is appropriate.

In addition, EPA has a mandatory duty to include in its 8-year review new pollutants like methane that it has not previously regulated, but that it has since determined endanger public health and welfare. It would be wholly inconsistent with the mandatory nature of section 111 if EPA could refuse to address, as part of its 8-year review, air pollutants that are emitted by an already-listed source category and that EPA has already determined endanger public health and welfare. Rather, the structure of the Act demonstrates Congress' intent that EPA thoroughly review and revise NSPS for a source category at least every 8 years and not limit such review to making changes to existing standards, but instead require EPA to enact more stringent air pollution requirements as circumstances change, as new information becomes available regarding the adverse public health and welfare effects of air pollutants, and as new technologies become available to control emissions of such pollutants. Congress contemplated the 8-year review to encompass EPA's revision of the standards to address other air pollutants, particularly those emitted by a source category that, based on current information, are now determined to significantly contribute to that source's endangerment of public health and welfare and/or for which there is demonstrated control technology available. Further, EPA's past practice confirms that the agency must consider during its 8-year review all of the air pollutants emitted by the source category under review and set NSPS for any of those pollutants that cause or contribute significantly to that source's endangerment of public health and welfare and for which there is demonstrated control technology. *See* 41 Fed. Reg. 3826-27 (Jan. 26, 1976) (addition of standards for SO_2 and CO in NSPS for primary aluminum reduction plants); 42 Fed. Reg. 22506-07 (May 3, 1977) (addition of standards for NO_X, SO_2, and CO in NSPS for lime manufacturing plants); 49 Fed. Reg. 25,106-07 (June 19, 1984) (addition of standards for PM, CO, and hydrocarbon emissions in NSPS for fossil fuel-fired industrial steam generating units).

EPA failed to act on regulation of methane under section 111 despite possessing extensive information that adding methane standards for oil and gas operations is "appropriate." In prior 8-year reviews of standards of performance under section 111, EPA has consistently applied two criteria in determining whether it is appropriate to include a standard for a health- and welfare-endangering air pollutant: (i) the extent of the source category's contribution to the emissions of the pollutant, and (ii) the availability of methods to reduce those emissions. *See, e.g.*, 75 Fed. Reg. 54,970 (Sept. 9, 2010) (finalizing new NO_x standard for cement plants). Applying these criteria to the oil and gas sector demonstrates that methane standards are appropriate at this time.

First, EPA has recognized that "processes in the Oil and Natural Gas source category emit significant amounts of methane." 76 Fed. Reg. at 52,756/1. Indeed, the proposal stated that the sector's methane emissions are equivalent to more than 328 million metric tons of carbon dioxide per year. *Id.* at 52,756/2. As a result, oil and gas operations are the second largest industrial source of U.S. greenhouse gas emissions, behind only electric power plants. *Cf.* 74 Fed. Reg. 16,448, 16,597 Table VIII-1 (April 10, 2009) (showing 2009 estimates of greenhouse gas emissions from other industrial source categories). As EPA explained in the 2012 final rule, "methane emissions from the oil and gas industry represent about 40 percent of the total methane emissions from all sources and account for about 5 percent of all CO_2e [carbon dioxide equivalent] emissions in the United States, with natural gas systems being the single largest contributor to United States anthropogenic methane emissions." 77 Fed. Reg. at 49,535/2. Although EPA projects that the standards adopted in the 2012 final rule for emissions of volatile organic compounds (VOCs) and hazardous air pollutants will have the incidental benefit of also reducing annual methane emissions by about 19 million metric tons CO_2e, *id.* at 49,535/3, the vast majority of methane emissions from this sector will remain uncontrolled.

EPA's failure even to consider directly controlling methane emissions through standards and guidelines resulted in the omission of controls for certain operations that emit large amounts of methane.

For example, EPA declined to establish standards for compressors and pneumatic controllers in the natural gas transmission and distribution segment asserting that, although this equipment emits large quantities of methane, much of the VOCs already have been removed by the time the natural gas stream reaches these sources. *See* 77 Fed. Reg. at 49,522-23 (declining to regulate transmission and distribution compressors because of "the relatively low level of VOC emitted from these sources").

Second, there are readily available methods to reduce methane emissions. In fact, the high methane content of these currently uncontrolled emissions means that adopting standards and guidelines that require methane emissions controls would be cost-effective (or even profitable) at many of these additional emission points. In the final rule, EPA recognized the economic value of emissions control measures for oil and gas equipment that lead to the recovery of hydrocarbon products, including methane, "that can be used on-site as fuel or reprocessed within the production process for sale." 77 Fed. Reg. at 49,534/1. Indeed, EPA found that the rule "will result in net annual costs savings of about $11 million (in 2008 dollars)." *Id.* By ending the waste of methane at sources of emissions not covered by the standards for VOCs, standards of performance that address methane emissions directly likely would add to the economic benefits of the rule. For instance, although compressors located at a wellhead or in the transmission, storage, and distribution segment are not covered under the rule, 77 Fed. Reg. at 49,492/2, EPA has determined that the payback period for compressor maintenance activities that reduce methane emissions is a mere 1 to 3 months. *See* EPA, "Reducing Methane Emissions from Compressor Rod Packing Systems" (Oct. 2006) at 1 (indicating payback periods from 1 to 3 months for compressor maintenance activities that reduce methane emissions). In addition, through EPA's voluntary Natural Gas Star Program, EPA has worked with oil and gas companies to identify more than 100 cost-effective technologies and practices to reduce methane emissions from sources of emissions not covered by the rule. *See* http://www.epa.gov/gasstar/tools/recommended.html.

Section 111(d) of the Clean Air Act also requires EPA to address methane emissions from existing sources, as well as from new and modified facilities. 42 U.S.C. § 7411(d)(1)(A). The Act requires EPA to establish procedures under which each state submits to the agency a plan to adopt, implement, and enforce standards of performance for existing sources for certain pollutants, and to promulgate standards of performance under such plans. *Id.* § 7411(d). The existing source requirements apply to those pollutants, such as methane, that have not been identified as criteria pollutants or hazardous air pollutants, but that are regulated under the new source performance standards for a category of sources. *Id.* § 7411(d)(1). Thus, the Act creates a direct connection between the new source standards and those to be developed for existing sources.

EPA's regulations require the agency to publish "emissions guidelines" "which reflect[] the degree of emission reduction achievable through the application of the best system of emission reduction which (taking into account the cost of such reduction) the Administrator has determined has been adequately demonstrated for designated facilities." 40 C.F.R. §§ 60.21(e), 60.22(a, b). These guidelines are implemented by state agencies who develop and submit to EPA plans to curb emissions of designated pollutants from existing sources. *Id.* § 60.23(a); 42 U.S.C. § 7411(d)(1). EPA has issued emission guidelines at the same time as new source standards for a listed category. *See* 62 Fed. Reg. 48,348 (Sept. 15, 1997) (standards of performance and emissions guidelines for hospital/medical/infectious waste incinerators); 61 Fed. Reg. 9905 (Mar. 12, 1996) (same for municipal solid waste landfills); 60 Fed. Reg. 65,387 (Dec. 19, 1995) (same for municipal waste combustors).

In sum, EPA has failed to review and update as necessary the existing oil and gas standards. EPA's continuing failure to make a final appropriateness determination during its 8-year review and to make the necessary revisions is contrary to section 111(b)(1)(B) of the Clean Air Act. *See* 42 U.S.C. § 7411(b)(1)(B). EPA's failure to make an appropriateness determination also has prevented EPA from fulfilling its duty to publish emissions guidelines covering methane emissions from existing facilities in

the oil and gas sector. EPA's continuing failure to publish these guidelines is contrary to section 111(d) of the Clean Air Act and the regulations implementing that section. *See* 42 U.S.C. § 7411(d); 40 C.F.R. § 60.22(a). We are therefore providing notice that, as of 60 days from the date of this letter, we intend to sue you as EPA administrator and EPA for EPA's failure to take these non-discretionary actions.

III. EPA Has Unreasonably Delayed Determining Whether Standards of Performance for Oil and Gas Operations Are Appropriate and, if so, Establishing Such Standards and Related Emissions Guidelines.

As set forth above, section 111(b)(1)(B) imposes a non-discretionary duty on EPA to review and, if appropriate, revise the NSPS for each category of sources, and section 111(d) and 40 C.F.R. § 60.22(a) impose a non-discretionary duty to establish emissions guidelines covering existing sources. Even if those provisions can be read to contain any ambiguity as to the deadline for these mandatory duties, EPA has unreasonably delayed taking action on methane emissions from the oil and gas sector.

EPA has long known the significance of the oil and gas sector's contribution to methane emissions and the availability and cost-effectiveness of measures for reducing those emissions. EPA's knowledge that oil and gas operations are one of the nation's largest methane sources dates to at least 1997, as the agency has published annual sector-by-sector inventories of U.S. greenhouse gas emissions since 1997, covering emissions since 1990.[1] Similarly, EPA has long had ample data on measures for controlling methane emissions. For example, in 2008, EPA explained that because of its experience implementing the agency's Natural Gas STAR Program, a voluntary public-private partnership with the oil and gas industry initiated in 1993, "many of [the] technologies and management practices" available to control methane emissions from the sector "have been well documented (including information on cost, benefits and reduction potential) and implemented in oil and gas systems throughout the U.S." EPA, Office of Air and Radiation, Technical Support Document for the Advanced Notice of Proposed Rulemaking for Greenhouse Gases; Stationary Sources, Section VII at 30 (June 2008).

EPA has been actively engaged in rulemaking to revise the oil and gas sector standards of performance at least since April 2010, when the agency began sending requests to visit regulated facilities to gather information. *See, e.g.*, Letter from K.C. Hustvedt, EPA, to Tom Monahan, ExxonMobil Production Co. (Apr. 30, 2010) Docket No. EPA–HQ–OAR–2010–0505-0053. In response to the 2009 litigation discussed above, EPA proposed revisions to the standards of performance for oil and gas operations in August 2011. 76 Fed. Reg. at 52,738. However, instead of drawing on the successes of the Natural Gas Star Program to propose a course of action, or even soliciting comment on the issue, the agency chose to ignore the problem. The proposal stated only that "[a]lthough this proposed rule does not include standards for regulating [methane emissions], we continue to assess these significant emissions and evaluate appropriate actions for addressing these concerns." *Id.* at 52,756/2. Multiple parties filed comments in November 2011 objecting to the failure to propose methane standards for this source category. Commenters argued that EPA had abundant evidence that uncontrolled methane emissions from oil and gas operations significantly contribute to atmospheric greenhouse gas pollution, that control measures are available and cost-effective, and that methane standards therefore are appropriate and legally required. *See, e.g.*, Comments of Sierra Club et al. at 74-80 (Nov. 30, 2011) Docket No. EPA–HQ–OAR–2010–0505-4240.

Notwithstanding these comments and the detailed information EPA already had in its possession, the agency has failed to make any appropriateness determination regarding the oil and gas sector's

[1] Links to each annual GHG emissions inventory are at http://www.epa.gov/climatechange/emissions/usgginv_archive.html.

methane emissions, or to propose or promulgate performance standards to meet its obligations under section 111(b)(1)(B) of the Act with regard to the oil and gas sector's methane emissions. EPA's failure to complete the rulemaking required under section 111(b)(1)(B) to address methane emissions from new and modified oil and gas operations has also resulted in an unreasonable delay in establishing emissions guidelines for the controlling methane emissions from existing oil and gas sector sources. EPA's unreasonable delay in issuing these guidelines in turn delays both the date by which states must submit plans for the control of methane from existing oil and gas operations, 40 C.F.R. § 60.23(a), and the date by which existing sources must comply with approved pollution control standards, *see id.* § 60.24(c). Therefore, we are also providing 180-day notice that we intend to sue you as EPA administrator and EPA for EPA's unreasonably delaying final agency action to determine whether standards for methane emissions from oil and gas operations are appropriate, to make the necessary revisions to 40 C.F.R. Part 60, and to issue emissions guidelines for methane emissions from existing oil and gas operations.

IV. Conclusion

EPA's acknowledgement that oil and gas operations account for a large share of methane emissions points to the urgent need to reduce these emissions. The agency's long experience with control strategies that recover methane emissions from oil and gas operations for productive uses confirms that there are cost-effective measures for this source category that would provide an appropriate basis for establishing a standard of performance for methane emissions. But EPA's failure to make progress in deciding whether standards are appropriate demonstrates that litigation may be needed to prompt the required agency action. Accordingly, the States of New York, Connecticut, Delaware, Maryland, Rhode Island, and Vermont, and the Commonwealth of Massachusetts, submit this notice of intent to sue for EPA's failure to complete the review of the standards of performance for oil and gas operations as mandated by section 111(b)(1)(B) of the Clean Air Act and for the agency's unreasonable delay in the completion of that action. The States of New York, Connecticut, Delaware, Maryland, Rhode Island, and Vermont, and the Commonwealth of Massachusetts, also give notice of their intent to sue for EPA's failure to complete the emissions guidelines for existing sources required by section 111(d) of the Clean Air Act and EPA's regulations at 40 C.F.R. § 60.22(a) and for the agency's unreasonable delay in the completion of that action.

We are willing to explore any effective means of resolving this matter without the need for litigation. However, if we do not hear from you within the applicable time periods provided in section 304 of the Act, we intend to file suit in United States District Court.

Very truly yours,

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EXHIBIT 2

Commonwealth of Massachusetts,
California, District of Columbia, Illinois, Maine, Maryland, New York,
Rhode Island, Vermont

April 3, 2017

Honorable Scott Pruitt
U.S. Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C., 20460

Re: Withdrawal of Information Collection Request (ICR) for the Oil and Natural Gas Industry, EPA ICR No. 2548.01 (Final Methane ICR)

Dear Administrator Pruitt:

We, the undersigned states, write to express our strong disagreement with your decision to withdraw the Final Methane ICR issued on November 10, 2016, regarding the Environmental Protection Agency's ("EPA") effort to regulate methane emissions from existing sources within the oil and gas sector pursuant to Clean Air Act section 111(d), 42 U.S.C. § 7411(d) ("Section 111(d)"). We urge you to reconsider that decision, or otherwise explain how EPA intends to fulfill its legal obligation to address methane leaks that are endangering public health and welfare.

You unilaterally withdrew the Final Methane ICR on March 2 with no meaningful explanation, let alone a reasoned one. The public had no window into the basis for your decision, and no understanding of how it relates to EPA's obligation to protect public health and the environment. We are troubled that your decision to withdraw the Final Methane ICR occurred immediately after the states of Texas, Alabama, Arizona, Kansas, Kentucky, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, and West Virginia wrote to you on March 1 requesting that you suspend and withdraw the ICR. These are the very states with whom you personally collaborated closely on your previous legal challenges to multiple EPA efforts to reduce greenhouse gas emissions, including the oil and gas sector methane new source performance standard issued pursuant to Clean Air Act section 111(b), 42 U.S.C. § 7411(b) ("Section 111(b)"). Despite your stated commitment to transparency, regulatory certainty, and the norms of administrative procedure, you pulled the Final Methane ICR without any opportunity for other states, stakeholders, and the general public to provide input—notwithstanding the fact that the ICR itself had been subject to two rounds of notice and comment prior to its finalization. *See* Proposed Information Collection Request; Comment Request; Information Collection Effort for Oil and Gas Facilities, 81 Fed. Reg. 35,763 (June 3, 2016); Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Collection Effort for Oil and Gas Facilities, 81 Fed. Reg. 66,962 (Sept. 29,

2016). Your arbitrary action demonstrates a disregard on your part for the mechanisms that ensure public participation in important governmental decision-making processes.

Americans are deeply concerned about the impacts of climate change, which are already being felt across the United States. Climate change is having a very real, significant, and adverse impact on American families and businesses. Just this month, after drought and unseasonably high temperatures set the stage, wildfires ravaged Kansas, Oklahoma, and Texas, destroying ranchlands and hundreds of heads of cattle, resulting in destruction so vast that ranchers are now referring to the fires as "our Hurricane Katrina."[1] Our failure to act will only worsen these impacts. *See generally*, *Our Changing Planet*, U.S. Global Change Research Program for FY 2017 at 2 (hereinafter, "USGCRP Report") (climate-driven impacts include risks to human health; more frequent and intense storms that threaten food security, infrastructure, and livelihoods; sea level rise and coastal flooding; international stability; and U.S. national security).

The National Aeronautics and Space Administration ("NASA") and the National Oceanic and Atmospheric Administration ("NOAA") have confirmed that 2016 was the warmest year on record globally.[2] NASA observed, "2016 is remarkably the third record year in a row in this series . . . . We don't expect record years every year, but the ongoing long-term warming trend is clear." *See also* USGCRP Report at 2 (internal citations omitted) ("The global environment is changing rapidly. . . . [G]lobally-averaged temperatures in 2015 shattered the previous record, which was set in 2014; and 2016 is on track to break the 2015 record."). According to NASA, the Earth's average temperature has risen about two degrees Fahrenheit since the late nineteenth century, due largely to increased carbon dioxide and other human-made emissions in the atmosphere. And most of that warming has occurred in our lifetimes, in the past thirty-five years. Indeed, sixteen of the seventeen warmest years on record have occurred since 2001.

Methane is a particularly powerful agent of climate change; pound-for-pound, methane warms the climate about thirty-four times more than carbon dioxide over a 100-year period, according to the Intergovernmental Panel on Climate Change, and on a twenty-year timeframe, has about eighty-six times the global warming potential of carbon dioxide. According to EPA, the oil and gas sector is the largest emitter of methane in the U.S., accounting for a third of total U.S. methane emissions.[3] Oil and gas production, transmission, and distribution results in

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1 Jack Healy, *Burying Their Cattle, Ranchers Call Wildfires 'Our Hurricane Katrina'*, N.Y. TIMES (Mar. 20, 2017), https://www.nytimes.com/2017/03/20/us/burying-their-cattle-ranchers-call-wildfires-our-hurricane-katrina.html?smprod=nytcore-iphone&smid=nytcore-iphone-share.

2 *NASA, NOAA Data Show 2016 Warmest Year on Record Globally*, NASA (Jan. 18, 2017), https://www.nasa.gov/press-release/nasa-noaa-data-show-2016-warmest-year-on-record-globally.

3 Chris Mooney, *The U.S. has been Emitting a lot More Methane than we Thought, Says EPA*, WASH. POST (Apr. 15, 2016), https://www.washingtonpost.com/news/energy-environment/wp/2016/04/15/epa-issues-large-upward-revision-to-u-s-methane-emissions/?utm_term=.9e451e916e23. *See also*, *Emissions of Greenhouse Gases in the U.S.*,

massive leakage of methane to the atmosphere—leakage that not only drives climate change, but also equates to lost revenue for producing states, and producers, transporters, and distributors of natural gas. Catching methane before it escapes to the atmosphere is good for the environment and good for the economy. Every ton of methane leaked to the atmosphere is a ton of methane that cannot be sold, and for producing states, may result in lost tax and royalty benefits. Conserving—not wasting—America's natural resources and making efficient use of them is a longstanding American value. Indeed, careful management of precious resources will better aid—not undermine—our efforts to become more energy-independent as a nation.

Existing sources within the oil and natural gas sector are projected to make up ninety percent of methane emissions from the sector in 2018.[4] A 2014 study by ICF International found that industry could cut emissions forty percent below projected 2018 levels at an average annual cost of *less than one cent per thousand cubic feet of natural gas.*[5] The capital investment required by industry would be $2.2 billion, representing less than one percent of typical annual industry capital expenditures.[6] Taking into account the total economic value of natural gas that would be recovered through use of additional emissions controls, a forty percent reduction is achievable and would *yield savings of over $100 million dollars per year for the U.S. economy and consumers.*[7] Operators would save, too—cost-effective methane reduction opportunities would generate over $164 million dollars per year net savings for operators.[8] States like Colorado and Wyoming have shown that it is possible to cost-effectively control these emissions—and their example has helped lay the groundwork for the federal Clean Air Act standards that are necessary to address this national problem.

Yet, despite these facts, you have done an about-face and withdrawn the Final Methane ICR, which would have allowed EPA to gain valuable information from industry in an effort to tailor a rule that would put in place controls to reduce emissions—in other words, conserve natural gas while generating savings for the American consumer.

Under Section 111(b) of the Clean Air Act, when the EPA administrator determines that a category of sources "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare," the Administrator "shall" include that

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U.S. ENERGY INFO. ADMIN. (Mar. 31, 2011), https://www.eia.gov/environment/emissions/ghg_report/ghg_methane.cfm (energy sector is largest source of U.S. methane emissions).

4 *Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries*, ICF INT'L 1-1 (2014), https://www.edf.org/sites/default/files/methane_cost_curve_report.pdf.

5 *Id.*

6 *Id.* at 1-2.

7 *Id.*

8 *Id.* at 4-3.

category on a list of stationary sources. 42 U.S.C. § 7411(b)(1)(A). Pursuant to Section 111(b), EPA previously listed crude oil and natural gas production as a source category that contributes significantly to air pollution that may reasonably be anticipated to endanger public health and welfare. *See Priority List and Additions to the List of Categories of Stationary Sources*, 44 Fed. Reg. 49,222 (Aug. 21, 1979).

Numerous scientific assessments, including, but not limited to, EPA's 2009 endangerment determination,[9] the assessments of the International Panel on Climate Change, the U.S. Global Change Research Program and the National Academy of Sciences, and scientific studies undertaken by states across the nation, establish that anthropogenic greenhouse gas emissions, including methane, may reasonably be anticipated to endanger public health or welfare. As described above, the oil and natural gas source category causes or contributes significantly to such greenhouse gas air pollution. As well, available technology can effectively and efficiently reduce methane emissions from the oil and natural gas industry. As a result, in 2015, EPA promulgated a final New Source Performance Standard under Clean Air Act Section 111(b) for methane emissions from new and modified oil and natural gas sources. *Oil and Natural Gas Sector Emission Standards for New, Reconstructed and Modified Sources*, 81 Fed. Reg. 35,824 (June 3, 2016).[10]

EPA is required to issue performance standards for existing oil and gas sector sources of methane emissions. *See* 42 U.S.C. § 7411(d). While not necessary for purposes of Section 111(d), EPA issued the ICR to assist in its development of standards that would be reasonable and workable for regulated entities. *See, e.g.*, 81 Fed. Reg. 35,764. All stakeholders, including industry, would benefit significantly from a transparent regulatory process designed to solicit key information regarding how the standards could be most effectively implemented.

For all these reasons, we urge you to reconsider your decision and reissue the Final Methane ICR, or otherwise explain how EPA intends to fulfill its legal obligation to address methane pollution under the Clean Air Act.

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9 *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

10 On March 28, President Trump issued an Executive Order requiring EPA to review, and if appropriate, publish for notice and comment rules "suspending, revising, or rescinding" the final New Source Performance Standard issued pursuant to Section 111(b) for methane emissions from new and modified oil and natural gas sources. *See* Executive Order, Section 7 (Mar. 28, 2017). Neither the Executive Order, nor any subsequent review, can vitiate EPA's legal obligation under the Clean Air Act to control oil and gas sector methane emissions. States will strongly oppose efforts to withdraw the methane NSPS, and will vigorously pursue legal action to ensure EPA complies with its obligation to regulate oil and gas sector methane emissions.

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