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EPN Comments on National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration

Docket No.: EPA-HQ-OAR-2025-1348

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The Environmental Protection Network (EPN) harnesses the expertise of more than 750 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

Thank you for the opportunity to comment on EPA's Proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) from Crude Oil and Natural Gas Production Facilities and from Natural Gas Transmission and Storage Facilities (Oil and Gas NESHAP) in connection with a technology review pursuant to Clean Air Act (CAA) section 112. EPN has reviewed the proposed rule and has the following general comments.

Introduction

The proposed reconsideration is partially in response to the DC circuit court (LEAN) decision[1] that requires EPA to address unregulated hazardous air pollutants (HAP) and emission points when conducting a 112(d)(6) review. However, in this proposal EPA now argues it is not required to address unregulated emission points for two reasons:

1) EPA has discretion on "whether particular emission points belong in one or another source category or subcategory." That's because the CAA "does not speak" to this particular issue and based on the Loper Bright decision,[2] the Agency does not have the authority to interpret the ambiguity in the CAA.
2) The LEAN decision focused on unregulated HAP, not unregulated emission points, and, therefore, is not directly applicable.

However, EPN is concerned about EPA's recent reliance on Loper Bright and that the Agency is now taking the opposite position. For example, the proposal for commercial sterilizers took the position that the agency did *not* have such discretion to revisit residual risk. Additionally, the Agency has already taken several actions in recent years to include unregulated emission points when conducting a 112(d)(6) review. This gives the impression that the Agency would be open to "cherry picking" based on what decisions would be considered best politically and leads to concerns about the Agency being arbitrary and capricious in its decision making.

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[1] Louisiana Environmental Action Network v. EPA, No. 17-1257 (D.C. Cir. 2020), available at https://law.justia.com/cases/federal/appellate-courts/cadc/17-1257/17-1257-2020-04-21.html

[2] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

A serious analysis of Section 112 under Loper Bright shows that EPA's current interpretation is incorrect. Section 112 was created to ensure that sources of HAP would be controlled after the failure of the previous air toxics provisions to control air toxics. Given the Section's purpose to control air toxics to protect public health and welfare, the best reading of Section 112 should always be assumed to be in favor of public health protection. The logic of LEAN is that all chemicals should be covered to protect public health. The same logic was also used in National Lime when the Court stated "the statute lists over one hundred specific HAPs,[3] and requires EPA to 'promulgate regulations establishing emission standards for each category or subcategory of major sources ... of hazardous air pollutants listed for regulation.'"[4] It makes no sense for the CAA to be concerned with regulating every HAP and every source category that releases those toxics, but not be concerned with regulating every emission point within a source category.

Finally, EPA in the proposal admits, "In the past, the EPA has suggested that the D.C. Circuit's decision in LEAN mandates that the EPA expand the NESHAP to include additional emission points as part of the technology review under CAA section 112(d)(6)." EPA then continues on to say they have a new opinion. While EPA has the right to change its view over time, it must, as the Supreme Court said in FCC v. Fox Television Stations, Inc., 556 U.S. 502 (2009), " make clear 'why the original reasons for adopting the [displaced] rule or policy are no longer dispositive' as well as 'why the new rule effectuates the statute as well as or better than the old rule.'"[5] The Court of Appeals for the District of Columbia Circuit has similarly indicated that a court's standard of review is "heightened somewhat" when an agency reverses course.[6] EPA fails this test by not providing a reasoned explanation, which by definition must include the reasons behind EPA's original decision and why that decision is incorrect. EPA's explanation is, in its entirety:

> "However, the Agency now proposes that LEAN does not mandate such action pursuant to CAA section 112(d)(6), which instructs the EPA to revise existing standards for regulated emission points "as necessary," considering developments since the last rulemaking. On this basis, the EPA proposes to defer action on such a potential expansion of the NESHAP to future action that looks at the problem holistically, including consideration whether such emission points belong within one or both of these NESHAP and what controls may or may not be appropriate and consistent with the statute."[7]

This virtual hand waving clearly fails the Supreme Court's test. EPA owes the public a reasoned explanation and the opportunity to comment on it.

1. **Addressing previously non-regulated emissions points**

EPN urges EPA to reject its proposed interpretation of CAA Section 112 that asserts EPA "is not required to address unregulated emission points," since it is based on an incorrect reading of the statute, as discussed below, is contrary to its intent and statutory language as well as the LEAN court decision, and is, therefore,

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[3] 42 U.S.C. § 7412(b) (1).
[4] Id. § 7412(d) (1)." National Lime Ass'n v. EPA, 233 F.3d 625 (D.C. Cir. 2000).
[5] 489 F. 3d, at 456–457 (quoting New York Council, Assn. of Civilian Technicians v. FLRA, 757 F. 2d 502, 508 (CA2 1985); emphasis deleted).
[6] NAACP v. FCC, 682 F. 2d 993, 998 (1982). (emphasis added)
[7] https://www.federalregister.gov/d/2026-07800/p-192

illegal. Notably, the 2012 rule left many unregulated emission points. If the proposed interpretation is implemented, it could open the door to establishing a precedent that could result in significant weakening of regulation here and elsewhere in future actions issued under the statute, by, in effect, allowing "cherry picking" of which points to regulate.

2. Determination of the MACT floor

EPN appreciates that EPA has proposed, as an alternative to the above interpretation of the statute, a set of new emissions standards for previously unregulated emission points, which include those for acid gas removal units, transport vehicle loading operations, storage vessels, transport vessel loading and natural gas-driven process controllers, and pumps at natural gas and transmission facilities. EPN supports establishment of standards for these unregulated emission points. However, EPN finds that the proposed standards are based on an inappropriate calculation of the maximum achievable control technology (MACT) floor, one that disregards currently available recent data. EPN considers it essential that EPA re-calculate the floors taking into consideration the data collected in the 2023 and 2024 Information Collection Requests (ICRs), tighter State and local requirements, and voluntary efforts. Because the proposed approach is one that reflects only the use of 1999 and 2012 data and disregards critical recent data, it is inconsistent with the intent of CAA section 112(d), which was to intended to require that MACT standards be at least as stringent as, "the average emission limitation achieved by the best performing 12 percent of the **existing** sources."[8] EPA cannot meet the statutory requirement of "existing sources" by using a technology analysis from a former century.

EPA's justification for using data that is over 25 years old relies on *U.S. Sugar Corp. v. EPA*, 113 F.4th 984 (D.C. Cir. 2024). But the EPA misreads the case. In *Sugar Corp*, the Court was concerned that requiring EPA to use the latest information would require EPA to pause the rulemaking process and recalculate its standards to reflect the information that EPA newly "has" in its possession. And that same issue would repeat itself if a single boiler sent EPA new information after it had completed that next round of emissions floor calculations.

EPN does not think that Congress intended for Section 112(d) to force EPA into such a never-ending loop. No such loop exists here. EPA has the data in hand - Table 6 in EPA's economic analysis[9] clearly lists the current levels of control of these sources by percentage of sources. EPA not only has the data, it effectively has already done the MACT floor analysis by including the percentage of each source that has different levels of control. EPA's action is especially egregious in the case of storage vessels without the potential for flash emissions (PFE) prior to the point of custody transfer, and storage vessels without the PFE at natural gas processing places,[10] where EPA is not even using data from the gas industry but is using almost 30 year old data from a completely different industry dealing with different chemicals.

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[8] CAA Section 112(d) (3) (A).

[9] Final EIA Memorandum. Economic Impact Analysis for National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities. Technology Review and Reconsideration. April 16, 2026.

[10] NESHAP Subpart HH.

EPA expresses concern that a "'potentially inequitable outcome' — some units could be subject to 'more stringent standards solely because of the EPA error.'"[11] In *Sugar Corp*, EPA and the Court were concerned about potential inequities between some industrial boilers by having more stringent controls than other similar industrial boilers. That potential inequity does not exist here; there are no MACT standards covering these sources in other industries. Acid gas removal units (AGRUs) would all be treated equally covered by the same standard. EPA shouldn't worry about being unfair to industry in this case, as they have been rewarded by decades of not being regulated. It is the public who have been treated inequitably by being denied the health protection they were entitled to under the law.

3. Revised Definition of Associated Equipment

EPN urges that EPA reject its proposal to alter the present definition of "associated equipment," a change which would prevent the aggregation of emissions from storage vessels and glycol dehydrators when determining whether they are major emission sources, as is done presently, and allow them to be evaluated separately to determine whether they are major sources. This could result in some individual emission sources being placed in the area source category, and, in this way, be subject to less stringent emission controls, setting a precedent for other sources.
EPA clearly misreads CAA section 112(n) in making this determination. Section 112(n) reads: "emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources." The CAA clearly combines the emissions of associated equipment by making them a single entity, note the use of the word "with." The aggregation of emissions in Section 112(n) refers to other separate wells. In other words, each well and its associated equipment stands on its own, and multiple wells cannot be combined, but each well and associated equipment are a single source. EPA's proposed action is clearly in violation of the Act's intent.

4. Methanol Standards for Small Dehydrators

EPN supports EPA's proposal that methanol standards are necessary for small dehydrators. EPN notes that EPA's reported methanol emissions comprise 7% or 564.4 tons (58 dehydrators at 22 facilities) of total HAP emissions from dehydrators in oil and gas production. While benzene, toluene, ethylbenzene, and xylenes (BTEX) may be an appropriate surrogate when considering combustion control, e.g., flares, of the 58 dehydrators, only 38 (66%) reported that emissions were controlled using a combustion device, and, thus, 34% did not. It is best to issue standards that ensure monitoring of methanol emission levels, and thereby reduce associated uncertainty, rather than to require flaring to ensure 95% reduction of all HAP. Potential risks associated with exposure to methanol emissions at these facilities have not been estimated by EPA, nor are they required to be at this juncture, to inform decision-making.

5. BTEX as a surrogate for Methanol and N-Hexane

EPA is requesting comment on still using BTEX as a surrogate for Methanol and N-Hexane. EPN believes that it is not an appropriate surrogate. As noted in the proposed rule, both Methanol and N-Hexane are

[11] https://www.federalregister.gov/d/2026-07800/p-309

controlled by combustion to a greater extent than BTEX, so setting a standard for BTEX will not account for reductions needed for either Methanol or N-Hexane.

6. **EPA's definition of necessary.**

EPA's proposal has multiple uses of "necessary" in the proposal. EPA owes the public its definition of the term "necessary" so we can understand EPA's rationale of its actions and lack thereof. EPA's use of the term in the proposal seems to limit its authority to protect public health, defining "necessary" not as the Act intended it: necessary to protect health and welfare. Instead EPA seems to think that "necessary" means that the Act forces EPA's hand to regulate. As an organization of over 750 retired EPA employees, we would remind current EPA leadership that EPA's mission has always been to "Protect Public Health and the Environment." This is reinforced by the purpose of the Clean Air Act which in Section 101(b)(1) defines as the first purpose:

> (1) to protect and enhance the quality of the Nation's air resources so as to **promote the public health and welfare** and the productive capacity of its **population.**

We note that the terms "business" and "industry" are found nowhere in the purposes of the Act.

7. **Transparency**

EPN also requests that EPA goes back to its longstanding practice of providing links to the key pieces of the record, the Economic Analysis and the Technical Support Documents on the same webpage which announces the proposal. EPA has a responsibility as a government agency in a democracy of making commenting on the many documents as easy as possible.

8. **Answers to specific questions**
   a. Should the EPA adopt OGI and 40 CFR part 60 appendix K as an alternative to EPA Method 21 leak detection and repair at processing plants?
      i. Yes, the stated technology is widely used and available. EPA has methods and requirements available, and the expense is cost effective.
   b. Should EPA pursue more information to determine the actual emissions of metal HAP from acid gas removal units, glycol dehydrators, or other potential sources of metal HAP? Submit data showing actual emissions from oil and gas production, storage, or transmission units.
      i. Yes, future NESHAPs will need more up to date data to calculate MACT floors.
   c. The EPA is requesting comment on the 2012 MACT floor analysis for small glycol dehydrators that determined the UPL.
      i. EPA should be establishing a new MACT floor based on the 2023 and 2024 ICR and new data from the RBLC.
   d. The EPA is accepting comments on a proposal to allow existing controllers to come into compliance by no later than 36 months after the effective date of the rule to allow operators to acquire and install equipment.
      i. Yes, particularly since no changes are being required.