COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD COMMISSION OF TEXAS ON PROPOSED RECONSIDERATION AMENDMENTS TO NEW SOURCE PERFORMANCE STANDARDS FOR THE OIL AND NATURAL GAS SECTOR; EPA DOCKET ID NO. EPA-HQ-OAR-2017-0483

Summary of Notice

On October 15, 2018, the U.S. Environmental Protection Agency (EPA) proposed amendments to the 40 Code of Federal Regulations (CFR) Part 60, Subpart OOOOa new source performance standards (NSPS) for new and modified sources in the oil and natural gas sector (83 FR 52056). The EPA proposed these amendments in response to petitions for reconsideration of certain aspects of the standards, which were originally adopted in 2016. The EPA granted reconsideration on three issues: (1) Fugitive emissions requirements, (2) well site pneumatic pump standards, and (3) the requirements for certification of closed vent systems by a professional engineer. The proposed amendments primarily relate to these three subject areas, but the EPA has also proposed amendments to make other technical corrections and clarifications. The Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RRC) appreciate the opportunity to comment on the proposed amendments.

Comments on Proposed Rule

I. Proposed Fugitive Monitoring Requirements

The TCEQ and RRC support the EPA's proposed approach of allowing certain state-based fugitive emission monitoring programs to be used as an alternative to the default fugitive emission monitoring requirements of the standards. However, the EPA should revise the proposed alternative standards for Texas to include monitoring of components at compressor stations.

Due to the complexity and variability of state and federal fugitive emission control requirements established under various regulatory programs (New Source Review permits, NSPS, Maximum Achievable Control Technology standards, Reasonably Available Control Technology standards, etc.) regulated sources are often faced with a confusing and duplicative combination of fugitive monitoring requirements. For this reason, the TCEQ supports the EPA's proposed approach of allowing sources to use certain existing, state-based programs which are already in place, in lieu of certain monitoring requirements of Subpart OOOOa. The TCEQ also generally supports the EPA's proposed finding that certain TCEQ fugitive emission monitoring programs are substantially equivalent to the default fugitive emission monitoring requirements in Subpart OOOOa. However, the TCEQ believes that the EPA's determination of equivalency for Texas should be revised as discussed below.

With respect to Tables 20 and 21 of the EPA's April 12, 2018, memo concerning the equivalency of state fugitive emission programs, the TCEQ would like to clarify that it does not review or treat fugitive emissions from well sites and compressor stations differently. Compressor stations are subject to the same fugitive monitoring requirements as well sites. Therefore, Tables 20 and 21 of the memo should be revised to show the same monitoring frequency for components at compressor stations as is shown for well sites. In addition, the portions of the proposed rule which relate to the use of a Texas fugitive emission monitoring program as an alternative to the nominal monitoring requirements, such as proposed §60.5399a(m), should also be revised to include components at compressor stations, not just well sites. Finally, the TCEQ would like to clarify that the 30 TAC §106.352 Permit by Rule (PBR) requirements for the leak definition will depend on the specific base fugitive emissions monitoring and repair program chosen by the owner/operator. Please refer to Attachment 1, which indicates the TCEQ's recommended revisions to the monitoring equivalency tables.

II. Relationship of the Oil and Natural Gas Industry Control Techniques Guideline with the Oil and Gas Sector NSPS

The TCEQ and RRC continue to support withdrawal of the Control Techniques Guidelines (CTG) for the Oil and Natural Gas Industry. At a minimum, the EPA should delay any state CTG submission requirements until finalization of the proposed NSPS revisions.

The CTG for the Oil and Natural Gas Industry issued by the EPA in October 2016 relied heavily upon the 2012 and 2016 oil and natural gas NSPS requirements. The NSPS affects new, modified, or reconstructed sources whereas the CTG affects existing sources. Generally, existing sources are not expected to comply with standards more stringent than standards new sources are expected to achieve within the same source category. However, the proposed NSPS revisions contain some requirements (such as fugitive monitoring frequency) which are less stringent than the corresponding requirements for existing sources in the current CTG. The TCEQ is not opposed to the proposed revisions to the NSPS considered by themselves, but this outcome in relation to the current CTG requirements would be inconsistent with historical practice. Although the EPA has stated that the CTG is only guidance, the EPA's policy is that CTGs establish presumptive RACT, and once the EPA adopts a CTG, states have very little flexibility in adopting requirements other than the CTG recommendations.

On March 9, 2018, the EPA proposed withdrawal of the CTG, suggesting impending final withdrawal of the CTG (83 FR 10478). Withdrawal of the CTG would relieve states of the CTG-associated federal clean air act (FCAA) obligations to submit state implementation plan (SIP) revisions containing RACT determinations for this source category by the SIP submission deadline of October 27, 2018 established in the final CTG. In its Notice of Proposed Withdrawal, the EPA explained that because the CTG is fundamentally linked to the underlying data and conclusions of the 2016 NSPS, the CTG should be withdrawn in its entirety while the 2016 NSPS is being reconsidered. The TCEQ submitted comments in April 2018 supporting the proposed withdrawal (Docket No. EPA-HQ-OAR-2015-2016).

In its comments on the proposed withdrawal of the CTG, the TCEQ further noted that the goal of a CTG is to reduce volatile organic compound (VOC) emissions to help provide for attainment of the ozone national ambient air quality standards (NAAQS). For areas that have been demonstrated through photochemical modeling to be primarily nitrogen oxide (NO_x)-limited rather than VOC-limited, the CTG-recommended controls are unlikely to provide a net ozone reduction benefit at the design value monitor and will not help contribute to attainment of the ozone NAAQS. Furthermore, the CTG is part of the EPA's Climate Action Plan and its purpose is to reduce greenhouse gas emissions. The use of a CTG for such purpose is inconsistent with the FCAA mandates that require states to implement RACT to provide for attainment of the NAAQS.

To date, the EPA has yet to finalize the CTG withdrawal or formally announce any other actions related to the CTG, leaving states uncertain about planning obligations. The EPA should not expect states to expend resources on implementing RACT regulations when it clearly intends to invalidate the oil and natural gas sector as a CTG source category, as evidenced by the proposed withdrawal. The EPA should either finalize the proposed withdrawal of the CTG, or formally delay the SIP submission deadline until the revisions to the NSPS are finalized and the CTG recommendations can be reevaluated. Given the EPA's multiple reconsiderations of the NSPS since the 2012 adoption and its proposed withdrawal of the CTG, it would be inappropriate for the EPA to require states to impose CTG RACT regulations on sources prior to finalizing the proposed NSPS revisions.