



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

May 2, 2013

**VIA CERTIFIED MAIL
& E-MAIL**

Acting Administrator Bob Perciasepe
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United States Environmental
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Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
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**Re: A COMMUNICATION FROM THE STATES OF ALABAMA, ARIZONA, INDIANA,
KANSAS, MONTANA, NEBRASKA, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH
DAKOTA, TEXAS, WEST VIRGINIA AND WYOMING REGARDING POTENTIAL EPA
SETTLEMENT NEGOTIATIONS WITH SEVEN NORTHEASTERN STATES REGARDING
THE REGULATION OF METHANE EMISSIONS**

Dear Acting Administrator Perciasepe and Assistant Administrator McCarthy:

We are writing to express our very great concern that the Environmental Protection Agency (EPA), may consider negotiations with the States of New York, Connecticut, Delaware, Maryland, Rhode Island, Vermont and Massachusetts (collectively, the "Northeastern States") to resolve their notice of intent (NOI) to file suit under section 304 of the Clean Air Act for EPA's decision not to regulate methane emissions from new and existing oil and natural gas drilling, production and processing facilities ("oil and gas facilities") under the New Source Performance Standards (NSPS) program. EPA should not enter into negotiations with the Northeastern States because, as discussed below, their claims are entirely without merit.

EPA has appropriately declined to regulate methane emissions from new and existing oil and gas facilities under the Clean Air Act. EPA's NSPS are promulgated pursuant to Clean Air Act §111 (42 U.S.C. 7411). Under §111(b)(1)(B) of the Clean Air Act, EPA must review and revise, "if appropriate," NSPS standards every eight years. In

its recent review of oil and gas facility emissions and promulgation of new NSPS Subpart OOOO, EPA declined to regulate methane emissions from oil and gas facilities, stating that it would continue to evaluate these emissions.

In their NOI, the Northeastern States claim on several grounds that the EPA has erred. They first rely on language from Clean Air Act §109, and a court decision interpreting this §109 language, to argue that EPA was required to articulate a decision on whether or not regulation of methane under Subpart OOOO was appropriate. Section 109(d) requires EPA to “complete a thorough review” of air quality criteria and national ambient air quality standards (NAAQS) at five-year intervals.

This argument fails in light of the language of §111(b)(1)(B). While the §109(d) requirement that EPA “complete” a review may support a conclusion that EPA is required to articulate a determination at the conclusion of such review, the more permissive language of §111(b)(1)(B) that EPA simply review and revise NSPS standards, “if appropriate,” compels no such conclusion. Moreover, §111(b)(1)(B) specifically provides that EPA need not review a NSPS standard if EPA determines that review “is not appropriate in light of readily available information on the efficacy of such standard.” It is clear that the CAA §111 NSPS review requirements are quite different from the NAAQS §109(d) review requirements, and that EPA has much more discretion under §111 to review and revise NSPS standards. EPA’s decision to continue to evaluate methane emissions from oil and gas facilities is entirely “appropriate” and consistent with the language of §111(b)(1)(B).

The Northeastern States also argue in their NOI that EPA was required to review and evaluate methane emissions from oil and gas facilities in their eight-year review of oil and gas facility emissions. But this argument cannot be squared with the law or existing practice. The intent of §111 arguably is, and the historical implementation of §111 by EPA certainly has been, focused on promulgation of standards for the criteria pollutants (NO_x, SO_x, CO, PM, ozone and lead) not methane. It is quite telling that the only examples cited by the Northeastern States in their NOI of EPA revising existing NSPS to include additional air pollutants were examples of EPA regulating additional criteria pollutants under an existing NSPS.

In addition, it is not clear that methane emissions from oil and gas facilities are major contributors of greenhouse gases. The Northeastern States admit in their NOI that oil and gas facilities are responsible for only 5 percent of the CO_{2e} annual emissions in the United States. More recent information from industry studies and state evaluations (e.g. the 2012 Texas Commission on Environmental Quality oil and gas emission factors study),

indicates that methane emissions from oil and gas facilities may be significantly lower than previous estimates. In fact, since the Northeastern States filed their NOI, the EPA Greenhouse Gas Inventory staff has reduced its methane emission estimates related to natural gas exploration and production significantly. However, the reductions are in only two of the thirty three relevant emission categories. Not yet addressed is EPA's estimate for methane emissions from well completions with hydraulic fracturing which are related to the recent NSPS Subpart OOOO rulemaking cited by the Northeastern States. This single category represents the largest contribution to the overall natural gas production sector emissions estimate, but it has been assessed by industry and academia to be inaccurate. The justification for those estimates has been challenged by mounting evidence, including voluminous data, and investigation of potential flaws in the statistical methodology.

Finally, the Northeastern States' NOI does not adequately acknowledge the extent to which methane emissions from oil and gas facilities are controlled by existing EPA NSPS and other regulations. EPA's reduced emission completion requirements for gas wells in the recently promulgated Subpart OOOO would certainly capture and reduce methane emissions, as would the Subpart OOOO emission control requirements for storage vessels. Emissions from compressors and engines are already subject to separate NSPS (Subparts IIII and JJJJ) and methane emissions from compressor blowdowns are regulated under EPA or state startup, shutdown and maintenance (SSM) regulations or permits. In fact, the Northeastern States NOI admits that methane emissions from oil and gas facilities are adequately controlled by including an EPA statement that many of the (over 100) methane control technologies and practices identified by the joint EPA and industry Natural Gas STAR program have been implemented by industry.

In sum, regulation of methane emissions from oil and gas facilities is not "appropriate" under the analysis contemplated by § 111(b)(1)(B) and methane emissions from oil and gas facilities are being controlled in any event, in compliance with existing regulations implemented by producing states and as a result of voluntary industry efforts. Given all this, it is abundantly clear that EPA should not succumb to the pressure intended by the Northeastern States' NOI and undertake negotiations with them on this issue.

But even should EPA disagree on the merits of the Northeastern States' claims, any negotiations should include other states that actually have oil and gas operations and facilities. Any discussions or negotiations with the Northeastern States to regulate methane emissions from oil and gas facilities would obviously have a significant impact on the economy and citizens of those States. Moreover, regulating methane emissions under the NSPS program would be a marked departure from EPA's historical practice and could

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therefore require significant additional resources to implement at a time when state resources are already strained and overburdened. For all these reasons, EPA must at a minimum include Oklahoma and other states with similar interests in any negotiations with the Northeastern States.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Pruitt". The signature is fluid and cursive, with a large initial "S" and a long horizontal stroke at the end.

E. Scott Pruitt

OKLAHOMA ATTORNEY GENERAL



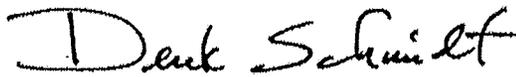
Luther Strange
Attorney General
State of Alabama



Tom Horne
Arizona Attorney General



Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management



Derek Schmidt
Attorney General
State of Kansas



Tim Fox
Attorney General
State of Montana



Jon Bruning
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State of Wyoming