ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 20-1360 & 20-1364 (consolidated with No. 20-1367)

ENVIRONMENTAL DEFENSE FUND, CENTER FOR BIOLOGICAL DIVERSITY, CLEAN AIR COUNCIL, EARTHWORKS, ENVIRONMENTAL INTEGRITY PROJECT, ENVIRONMENTAL LAW & POLICY CENTER, FOOD & WATER WATCH, FT. BERTHOLD PROTECTORS OF WATER AND EARTH RIGHTS, NATIONAL PARKS CONSERVATION ASSOCIATION, NATURAL RESOURCES DEFENSE COUNCIL, AND SIERRA CLUB,

Petitioners

v.

ANDREW WHEELER, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AND UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents

MOTION FOR PARTIAL STAY PENDING REVIEW

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 18(a)(1)

The undersigned certifies that this Motion for Partial Stay Pending Review complies with Circuit Rule 18(a).

Petitioners previously requested relief from respondents Andrew Wheeler, Administrator, U.S. Environmental Protection Agency ("EPA"), by a letter provided electronically and in hard copy on September 4, 2020. *See* A65-A68.[1] Petitioners' letter requested that the rule under review be immediately stayed pending litigation. After receiving no response from EPA or its Administrator, Petitioners filed this motion for relief on November 13, 2020.

On November 11, the undersigned provided notice of this filing to Brian Lynk, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

DATED: November 13, 2020

/s/ *Rosalie Winn*
Rosalie Winn

[1] "A" cites are to Movants' consecutively-paginated attachments submitted with this motion.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules and Regulations

Executive Orders

* Authorities chiefly relied upon are marked with an asterisk.

GLOSSARY

Administrator	Andrew Wheeler, Administrator, Environmental Protection Agency
EDF	Environmental Defense Fund
EPA	Environmental Protection Agency
Rescission Rule	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 85 Fed. Reg. 57,018 (Sept. 14, 2020)
Rollback Rule	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration, 85 Fed. Reg. 57,398 (Sept. 15, 2020)
Section 111	42 U.S.C. § 7411
VOCs	Volatile organic compounds
2016 Rule	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule, 81 Fed. Reg. 35,824 (June 3, 2016)

INTRODUCTION

Hundreds of thousands of people, including thousands of Petitioners' members, live within a half mile of the wells that produce oil and natural gas and the stations that compress and send that gas to market that are at issue in this motion. A97 (¶43). Massive amounts of pollution leak from these wells and compressor stations into the air these people breathe, including smog- and soot-forming volatile organic compounds ("VOCs"), and hazardous air pollutants like benzene and formaldehyde. These wells and compressor stations also leak hundreds of thousands of tons of the powerful greenhouse gas methane (the predominant component of natural gas).

Reducing pollution from the oil and gas sector requires regularly checking for and repairing these leaks. In 2016, EPA issued standards requiring industry to find and fix leaks of VOCs and methane from new and modified wells and other equipment. For more than three years, those standards have been reliably reducing large quantities of pollution. Yet in September, without identifying any adverse effects on industry from these standards, EPA Administrator Andrew Wheeler took two actions drastically weakening them. On September 14, in an

action challenged in *California v. Wheeler*, No. 20-1357, he rescinded methane standards across all segments of the industry and eliminated the remaining VOC standards for the downstream segment. 85 Fed. Reg. 57,018 ("Rescission Rule"). The next day, in the action challenged here, the Administrator significantly weakened the remaining leak detection and repair standards for VOC emissions from the upstream segments of the industry. 85 Fed. Reg. 57,398 (Sept. 15, 2020) ("Rollback Rule") (A1-A64).

The Rollback Rule made two arbitrary and capricious changes that dramatically increase pollution from leaks. First, without a rational explanation, the Administrator weakened VOC standards for more than 1,000 compressor stations—among the leakiest sources. Second, he revoked all leak mitigation requirements for more than 16,000 "low production" (but *not* low pollution) oil and gas wells. He did so based on cherry-picked data collected from just 16 gas wells.

Beginning on November 16, 2020, the Rollback Rule will allow substantial excess emissions into the air communities near these deregulated sources breathe. In 2021 alone, the Rollback Rule will permit excess emissions of 21,000 tons of VOCs and more than 800 tons

of hazardous air pollutants. A99 (¶46). That same year, it will allow 77,000 excess tons of methane emissions. *Id.* Methane is responsible for a quarter of the Earth's warming to date. A197 (¶3). Once emitted, these pollutants cannot be captured, and the resulting harms cannot be reversed.

Petitioners respectfully ask this Court to stay two portions of the Rollback Rule: (1) the reduction in leak monitoring frequency for compressor stations (40 C.F.R. § 60.5397a(g)(2)); and (2) the exemption of low production wells from leak mitigation requirements (40 C.F.R. § 60.5397a(a)(1)(i)-(ii)).

STATUTORY BACKGROUND

Clean Air Act section 111 requires EPA to issue pollution standards (called "standards of performance") that limit emissions from each category of new and modified sources the agency has determined cause or contribute significantly to dangerous air pollution. 42 U.S.C. § 7411(b)(1). The Act defines "a standard of performance" as "a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such

reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." *Id.* § 7411(a)(1).

For decades, EPA has used "cost-effectiveness" (i.e., the cost per ton of pollution reduced) as a metric to set section 111 standards. The agency sets the standard at the level that reduces the most pollution while costs remain reasonable. EPA has previously deemed standards for VOC controls costing up to around $5,000 per ton to be cost-effective, and thus appropriate under section 111(b)(1). *See, e.g.*, 80 Fed. Reg. 56,593, 56,636 (Sept. 18, 2015) (concluding, based on past practice, that VOC reductions costing $4,979 per ton were cost-effective); *see also* A218.

FACTUAL BACKGROUND

A. The 2016 VOC and Methane Rule

In 2016, EPA updated existing VOC performance standards for new and modified sources in the oil and natural gas sector and added performance standards for methane. 81 Fed. Reg. 35,824 (June 3, 2016) ("2016 Rule") (A219-A339). The cornerstone of the 2016 Rule was a set of leak detection and repair requirements that directed oil and gas

companies to monitor their wells and equipment at specified intervals to detect leaks (sometimes called fugitive emissions), repair those leaks, and report periodically. *See id.* at 35,904-06. These requirements accounted for up to 45% of the 2016 Rule's VOC reductions, 90% of its hazardous air pollutant reductions, and more than half of its methane reductions. A350.

In developing the standards, EPA considered the appropriate frequency of leak mitigation. More frequent inspections reduce more pollution by finding and fixing leaks earlier, but at marginally greater cost. Following EPA's decades-long practice, the agency used cost-effectiveness as a metric to assess the appropriate frequency. Consistent with prior rulemakings, EPA concluded that control requirements costing up to $5,000 per ton of VOC reduced were cost-effective. *See, e.g.*, 80 Fed. Reg. at 56,636.

Recognizing that leak mitigation techniques perform double duty, reducing two pollutants regulated under section 111—VOCs and methane—at the same time, as it had in the past EPA calculated cost-effectiveness two different ways. *Id.* at 56,617 & n.44. First, it attributed *all* the costs of leak mitigation to achieving just VOC

reductions or just methane reductions. *Id.* at 56,617. Second, it apportioned half the costs of leak mitigation to achieving VOC reductions and half to achieving methane reductions. *Id*. Under the latter multi-pollutant approach, the cost attributed to reducing each ton of VOC or methane is in effect halved, and its cost-effectiveness doubled. *See id.*; *see also* 85 Fed. Reg. at 57,418 n.50.

For compressor stations, EPA found that annual, semiannual, and quarterly leak mitigation all fell below $5,000 per ton of VOCs and were therefore cost-effective. Quarterly monitoring, however, would reduce far more VOC emissions (3,848 tons in 2020) than semiannual monitoring (2,885 tons). A361-A362. Accordingly, EPA required quarterly monitoring because that would "ensure the maximum amount of emission reductions" while falling within the agency's historic cost-effectiveness benchmark. 81 Fed. Reg. at 35,862.

For well sites (which may contain more than one well), EPA concluded that semiannual and annual monitoring were both cost-effective. EPA selected semiannual because it "would achieve greater emissions reductions" while remaining cost-effective. *Id.* at 35,856.

EPA declined industry requests to exempt "low production" well sites from these requirements. The 2016 Rule defined "low production" wells as new wells producing less than 15 barrels per day of oil equivalent on average over their first 30 days of production. *Id.* EPA concluded that industry had provided insufficient information to treat "low production" wells differently and that the data the agency possessed suggested these wells could leak VOC and methane pollution at rates similar to higher-production wells. *Id.*

EPA found that the capital costs of *all* requirements in the 2016 Rule represented just 0.2% of annual industry capital expenditures, and that the 2016 Rule's annual costs represented just 0.14% of annual revenues. A413. Further, semiannual leak surveys at low production well sites cost only $650 per year, a miniscule fraction of both the average revenues from those sites and the $5-8 million dollars it costs to drill a new well. A367 (¶5); A371 (¶11); A372 (¶13). The industry has now been complying with these leak detection and repair provisions for well over three years, with no evidence of implementation difficulties or financial hardship.

B. The 2020 Rollback Rule

Almost immediately upon taking office, the current administration began efforts to weaken the 2016 Rule. *See* Exec. Order No. 13,783 § 7(a) (Mar. 28, 2017) (directing EPA to publish "proposed rules suspending, revising, or rescinding" the 2016 Rule). Early in 2017, then-EPA Administrator Pruitt summarily stayed the 2016 Rule's leak mitigation provisions, 82 Fed. Reg. 25,730, 25,732 (June 5, 2017), an action this Court found "arbitrary, capricious, [and] in excess of [EPA's] statutory … authority." *Clean Air Council v. Pruitt*, 862 F.3d 1, 8 (D.C. Cir. 2017).

Administrator Wheeler finalized, the Rescission and Rollback Rules in September 2020. The Rescission Rule repealed the 2016 methane standards and entirely removed the industry's downstream (transmission and storage) segment from the regulated source category.[2] The Rollback Rule, challenged here, further weakened the

[2] A divided panel of this Court recently denied motions seeking a stay or summary vacatur of the Rescission Rule, but set an accelerated schedule for merits briefing. Order, No. 20-1357 (D.C. Cir. Oct. 27, 2020), ECF No. 1868350.

remaining VOC standards for the upstream (production and processing) segments in two important ways, both of which increase pollution.

First, for more than 1,000 compressor stations, the Administrator reduced leak inspection requirements from quarterly to semiannual. Despite recognizing that quarterly leak mitigation had (1) proven *less* expensive than EPA had projected in 2016 and (2) remained well within the agency's historic cost-effectiveness benchmark for VOCs, 85 Fed. Reg. at 57,421 & tbl.5, the Administrator pronounced semiannual monitoring more appropriate because it was deemed "*very* cost-effective," *id.* at 57,421 (emphasis added).

Second, the Administrator entirely exempted 16,000 "low production" wells from any leak mitigation requirements. A85 (¶25). The Administrator vastly expanded the number of sites considered "low production" by including not just wells whose production was low from the start, but also a much larger set of aging wells whose production has declined. 85 Fed. Reg. at 57,428 (acknowledging that few new well sites are low production initially, but that "eventually all well sites become low production"). The Administrator then reversed EPA's 2016 factual finding that such wells have the same potential to leak as

higher-production wells. The factual support for exempting more than 16,000 oil and gas wells came from a single day's data on 16 gas wells cherry-picked from a study conducted more than a decade ago (the "Fort Worth Study"). *See infra* pp.17-18.

STANDARD FOR DECISION

To obtain a judicial stay, Petitioners must demonstrate: (a) a likelihood of success on the merits; (b) that they are likely to suffer irreparable harm in the absence of a stay; (c) that the stay will not substantially injure others; and (d) that a stay is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). The final two factors "merge when the Government is the opposing party." *Id.* at 435.

ARGUMENT

I. Petitioners Are Likely to Succeed on the Merits.

A. The rollback of compressor station standards is arbitrary and capricious.

In 2016, EPA concluded that quarterly leak mitigation standards for compressor stations met all of the section 111 statutory factors. *See* 81 Fed. Reg. at 35,826 tbl.1, 35,861-62; *supra* pp. 5-6. Among cost-effective options, EPA found that quarterly monitoring would "ensure the maximum amount of emission reductions"—the purpose of the "best

system of emission reduction," 42 U.S.C. § 7411(a)—and so established quarterly requirements. 81 Fed. Reg. at 35,862.

The Rollback Rule does not dispute those factual findings. The agency affirmed that EPA's "prior consideration of the statutory factors … continue[s] to be sound." A437; *see also* 85 Fed. Reg. at 57,421. Indeed, the Rollback Rule found quarterly monitoring *even more* cost-effective than projected in 2016. 85 Fed. Reg. at 57,421 tbl.5 (quarterly leak mitigation costs $3,221 per ton for VOCs in 2020 compared to $3,391 per ton in 2016, adjusted for inflation). And quarterly monitoring costs only $1,611 per ton of VOCs when control costs are divided between VOC and methane reductions. A451 tbl.2-32. The Administrator also reaffirmed that quarterly mitigation curbs more emissions than semiannual. 85 Fed. Reg. at 57,421.

Nevertheless, the Administrator announced that "EPA thinks it is reasonable to forgo quarterly monitoring." *Id.* In a single, muddled paragraph, *see id.*, the Administrator discarded EPA's past practice of choosing the cost-effective option that achieves the most emissions reductions, without any good reason. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

To make quarterly standards *appear* less cost-effective, the Rollback Rule introduced a new metric—the "incremental" cost-effectiveness of moving from semiannual to quarterly monitoring. But the Rollback Rule conceded that, even using this metric, quarterly monitoring is *still* "cost-effective for VOC reduction based on past EPA decisions, including the 2016 rulemaking." 85 Fed. Reg. at 57,421. The Administrator nonetheless weakened the standard, characterizing semiannual monitoring as "*very* cost-effective," while observing that quarterly monitoring was on the "high end" of the cost-effectiveness range under the new "incremental" metric. *Id.* (emphasis added).

The Rollback Rule failed to articulate any good reason for why a control measure must now be "*very* cost-effective" instead of the prior benchmark that it be "cost effective." To change policy lawfully, EPA must provide "a reasoned *analysis* indicating that prior policies and standards are being deliberately changed, not casually ignored." *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 647 (D.C. Cir. 2020) (emphasis in original).[3] Likewise, EPA must "grapple with how [its]

[3] EPA officials recognized that the "only way" to find quarterly monitoring "not cost-effective" would be to "draw a new line," which could "compromise" the agency's section 111 program. A454 (comment

policy affected its statutory … mandates." *Id.* To satisfy that requirement, the Administrator had to (1) acknowledge and explain his departure from past agency practice in choosing to forego cost-effective pollution reductions, and (2) weigh the emissions increases that result from his departure. *See Sierra Club v. Costle,* 657 F.2d 298, 326 (D.C. Cir. 1981) (the "amount of air pollution [is] a relevant factor to be weighed when determining the optimal standard"). He did neither.

Instead, the Rollback Rule proffered two "additional factors" as purportedly "influen[tial]"—each in a single speculative and conclusory sentence—by way of explanation. 85 Fed. Reg. at 57,421. First, it stated that the "industry is currently experiencing significant financial hardship" and observed that this "may weigh against the appropriateness of imposing the additional costs associated with more frequent monitoring." *Id.* But the Administrator did not show that the minor costs of continuing quarterly leak detection and repair are

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on "frequency of fugitive emission monitoring"). White House officials exerted considerable pressure on EPA to relax the standards, despite EPA's repeated admonishments that it "followed the requirements in the statute when setting the [best system of emission reduction] for fugitive emissions monitoring at compressor stations as quarterly." A844. But the White House was blunt, directing EPA that the compressor standards "cannot stay the same as the 2016 rule." A454.

connected to this temporary financial hardship, or that the savings from dropping to semiannual monitoring would materially affect the industry's financial condition. As discussed *supra* p. 7, the annual costs of *all* requirements in the 2016 Rule—not just the leak mitigation program—represented just 0.14% of annual revenues. A413. The Rollback Rule cited no new or contrary data and nowhere explained why *temporary* financial hardship could justify *permanently* relaxing pollution control standards.

Second, the Administrator claimed that there are "potential efficiencies, and potential cost savings," from putting compressor stations and wells on the same semiannual monitoring frequency. 85 Fed. Reg. at 57,421. The notice offers no further explanation, much less data, to show the magnitude of the claimed "potential" efficiencies or savings or explain why they justify additional pollution. *See Orangeburg v. FERC*, 862 F.3d 1071, 1087 (D.C. Cir. 2017) (finding agency's "unadorned" explanation insufficient). Indeed, the Rollback Rule recognizes that most costs associated with leak mitigation are fixed annual costs (e.g., record-keeping and reporting), which "do not

vary with the monitoring frequency." 85 Fed. Reg. at 57,421 tbl.5 n.2; *see id.* at 57,418.

Neither "additional factor" provides a good reason for weakening compressor station requirements because neither is explained or tied to facts in the record. The Administrator provided no reasoned basis for departing from the existing agency practice of requiring cost-effective (not "very" cost-effective) standards that achieve the greatest emission reductions. *Physicians for Soc. Resp.*, 956 F.3d at 647.

Moreover, had the Administrator considered that leak mitigation efforts perform double duty—reducing *both* VOCs and methane—and attributed only half of the costs to VOC reductions, *supra* pp. 5-6, quarterly monitoring would have easily cleared the Administrator's "very" cost-effective threshold, *supra* p. 12, under either the traditional ($1,611 per ton) or incremental ($2,494 per ton) metric. A450; A452 tbl.2-35f (half of incremental cost of $4,988). The Administrator fails to provide a good explanation for ignoring the multi-pollutant approach.

B. The elimination of requirements at low production well sites is arbitrary and capricious.

"Agency action is arbitrary and capricious if the agency offers insufficient reasons for treating similar situations differently."

Muwekma Ohlone Tribe v. Salazar, 708 F.3d 209, 216 (D.C. Cir. 2013). EPA must have a rational basis for treating some sources in the regulated category differently—in this case, for exempting low production well sites from generally-applicable requirements for other well sites.

In 2016, EPA declined such an exemption, concluding that there was no data showing that low production well sites polluted less than other well sites; indeed, available emissions data indicated that emissions from low production sites could be just as significant. 81 Fed. Reg. at 35,856. EPA also considered industry's argument that emissions were correlated with the number of potentially leaky components present at the well site (not with production levels), but concluded that low production well sites had the same types and number of components as other well sites. *Id.*; A471.

The Rollback Rule eliminated *all* leak detection and repair requirements for a vastly larger set of "low production" wells than EPA considered in 2016—now defined to include not only new wells that produce under 15 barrels per day in their first month, but also aging wells whose production has declined from high levels to under 15

barrels per day, calculated based on a rolling 12-month average. *See* 85 Fed. Reg. at 57,420; *supra* p. 9. This includes over 16,000 oil and gas wells across the country. A85 (¶25). Reversing EPA's earlier position, the Administrator claimed that this expanded set of "low production" wells emits less pollution than other wells, and that leak mitigation is "not cost-effective" at *any* frequency for *any* of these wells. *See* 85 Fed. Reg. at 57,412, 57,419.

The Administrator based these conclusions not upon actual emissions data (which he ignored), but upon hypothetical equipment counts in a "model plant" built from data cherry-picked from a single study, the Fort Worth Study. Researchers visited 375 wells near Fort Worth, Texas, a decade ago and collected one day's worth of production, emissions, and equipment count data. A474. Reviewing this data in the proposed Rollback Rule, the Administrator deemed 27 of these wells "low production" because they produced fewer than 15 barrels of oil equivalent on the day data was collected. *Id*. In the final Rollback Rule, the Administrator further narrowed his focus to 16 wells, because the other 11 recorded zero production on the day in question. 85 Fed. Reg. at 57,417; A446-A447. He then estimated emissions based on the

number of components found at those 16 wells and assumptions about how much each piece of equipment leaks. Based on this "model well," he estimated that all low production wells have fewer components than higher-production wells and therefore fewer emissions. *See* 85 Fed. Reg. at 57,419; A439-A440.

To be sure, "model plants" are commonly used by EPA to estimate emissions, and the agency has previously used data from the Fort Worth Study. But this Court requires "some indication of a reasonable concurrence between model and reality," *Am. Petroleum Inst. v. EPA*, 862 F.3d 50, 69 (D.C. Cir. 2017), *modified on reh'g*, 883 F.3d 918 (D.C. Cir. 2018), and the Administrator's analysis here provides none. He went far beyond the bounds of his discretion for at least three reasons.

First, as noted, the Fort Worth Study contained emissions data—actual, measured emissions from leaks—as well as component counts. Yet without explanation, the Administrator considered *only* the study's data on component counts while entirely ignoring its data on *actual, observed emissions*. The Fort Worth Study's emissions data supported EPA's 2016 finding that low production wells could leak as much as higher-production wells, in fact showing that low production wells had

significantly *higher* leak emissions than EPA's estimates for higher-production wells. *Compare* A476 tbl.1 *with* A448 tbl.2-14a (well sites classified by EPA as low production from Fort Worth Study had almost double EPA's estimated leaks for high production well sites).[4] It is decidedly arbitrary and capricious for the Administrator to "rely on portions of" the Fort Worth Study that support his analysis via indirect calculations based on equipment counts while "ignoring" the far more relevant direct emissions data in the same study "that do not [support his position]." *Genuine Parts Co. v. EPA*, 890 F.3d 304, 313 (D.C. Cir. 2018).

Second, the Administrator fails to explain why the 16 well sites in the Fort Worth area upon which he bases his model plant are representative of the 16,000 well sites covered by his exemption. The 16 wells produced only gas, but the Administrator estimates that roughly 90% of the exempted low production sites produce *oil*. *See* A449 tbl.2-21 n.a. There is no information on where the 16 wells fell in their life cycle, making it impossible to know if they are representative of either new

[4] Environmental Defense Fund ("EDF") submitted analysis showing the same result: that wells at low production sites had similar emissions from leaks to EPA's model plant for higher-production wells. A105 tbl.1.

wells that commence operation at a low production rate, or aging wells whose production has declined. The Administrator does not even show that the 16 wells, classified based upon one day of production data, meet the Rollback Rule's own definition of "low production," which is based on production averaged over the course of a month (for new wells) or at least a year (for aging wells). *Supra* pp. 16-17.

Third, even those 16 wells were cherry-picked. As explained *supra* p. 17, the Fort Worth Study researchers examined 27 well sites that the agency deemed low production. But the Administrator included only 16 in his model plant, excluding the other 11 well sites—a full 40% of those "low production" sites visited. Had the Administrator included all 27 well sites in his "model plant" he would have concluded that controlling emissions from low production wells was cost-effective, as he did when he considered those wells in his proposed rule. *See* 83 Fed. Reg. 52,056, 52,069 (Oct. 15, 2018); A485.

The Administrator's only explanation for excluding these 11 well sites is that "the Fort Worth Study only provided production [data] for the day prior to any site visit in the study, and zero production may have been due to any number of reasons not related to actual normal

production." A447. But, because the study collected only one day of production data, this reasoning applies equally to *all* of the 27 well sites he deemed "low production." It is arbitrary for the Administrator to "cherry-pick[]" between "favorable evidence" and "unfavorable evidence" from the same source. *See Sierra Club v. Salazar*, 177 F. Supp. 3d 512, 540 (D.D.C. 2016) (citing *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008)).

Finally, the Administrator once again arbitrarily ignored the cost-effectiveness when taking into account the fact that leak mitigation reduces *both* VOCs and methane. *See supra* p. 15. Had he considered this metric, he would have concluded that, even using the model plant based upon cherry-picked data, semiannual monitoring for low production sites would be cost-effective, at $3,058 per ton of VOC reduced. A451, tbl.2-32.

II. Petitioners and Their Members Will Be Irreparably Harmed Absent a Stay.

The Rollback Rule, which is slated to take effect on November 16, 2020, removes critical existing protections. More than 1,000 compressor stations will leak dangerous pollution for much longer. A78, tbl.2. And more than 16,000 low production wells will leak dangerous pollution

indefinitely. A85 (¶25). The result is excess emissions of 21,000 tons of smog- and soot-forming VOCs, 800 tons of hazardous air pollutants, and 77,000 tons of the powerful greenhouse gas methane each year—causing substantial and irreparable injury to petitioners' members' health and welfare during the pendency of this litigation. A99 (¶46); *see also* A486-A510; A520-A842.

Increased ozone-forming VOC pollution threatens the health of Petitioners' members and the public. Ozone exposure impairs lung functioning and leads to missed school- and work-days, hospital visits, strokes, heart attacks, and death. A159-A165 (¶¶4-14). Children, the elderly, low-income communities, and people with pre-existing conditions are particularly vulnerable. A161 (¶7). And *any* additional VOC pollution in areas that have not attained health-based air quality standards ("ozone nonattainment areas") increases the health risks in these areas. Likewise, exposure to hazardous air pollutants, such as benzene and formaldehyde, can cause cancer, neurological damage, and other major health problems. A169-A171 (¶¶20-22). There is no safe level of exposure for many of these toxic pollutants. A170 (¶21).

Methane is an extremely potent climate pollutant. It is more than 80 times more powerful over a 20-year timeframe than carbon dioxide. A199 (¶4). Immediate reductions in methane emissions are "crucial" in combating climate change. A201 (¶7). The impacts of methane pollution include an increased likelihood of more extreme weather events such as drought and floods, rising sea levels, and the loss of species, A201-A204 (¶¶7-9), all of which harm Petitioners' members.

"Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment." *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987). Increased air pollution will cause irreparable injury to public health during the pendency of this litigation. *Beame v. Friends of Earth*, 434 U.S. 1310, 1314 (1977); *California v. BLM*, 286 F. Supp. 3d 1054, 1073 (N.D. Cal. 2018) ("[A]dditional [methane, VOC, and HAP] emissions [from oil and gas production] will cause irreparable public health and environmental harm to Plaintiffs' members….").

The increased emissions at stake here and the harm they will cause are "certain and great, actual and not theoretical, and so imminen[t]" as to necessitate immediate relief. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). Once emitted, excess pollution cannot be removed from the air; the ensuing harm is thus quite literally "beyond remediation." *Id.*

A. Petitioners are irreparably harmed by the rollback of compressor station standards.

The Rollback Rule cuts in half the frequency of monitoring at more than 1,000 compressor stations, allowing in the next year an additional 15,000 tons of VOCs, 600 tons of hazardous air pollutants, and 53,000 tons of methane to leak from these sources. A78-A79 (¶16).

The climate impacts of the additional methane pollution will be substantial, equaling the emissions of nearly a million cars on the road for a year. A205 (¶12). So, too, the health impacts of additional VOCs and hazardous air pollution. Over 1,000 of Petitioner EDF's members live within 10 miles of an affected compressor station, and more than 12,700 EDF members live in ozone nonattainment areas where additional VOCs from affected compressor stations will worsen already unhealthy air. A492 (¶17).

These effects will be felt acutely by Petitioners' members like Todd Richardson, a member of the Sierra Club, Natural Resources Defense Council, and EDF, who lives in Odessa, Texas, and is surrounded by fifteen affected compressor stations within a twenty-mile radius of his home. A495-A497 (¶¶2, 3, 6, 9). Absent a stay, Mr. Richardson and thousands more of Petitioners' members and similarly situated people will be irreparably harmed by increased pollution from affected compressor stations.

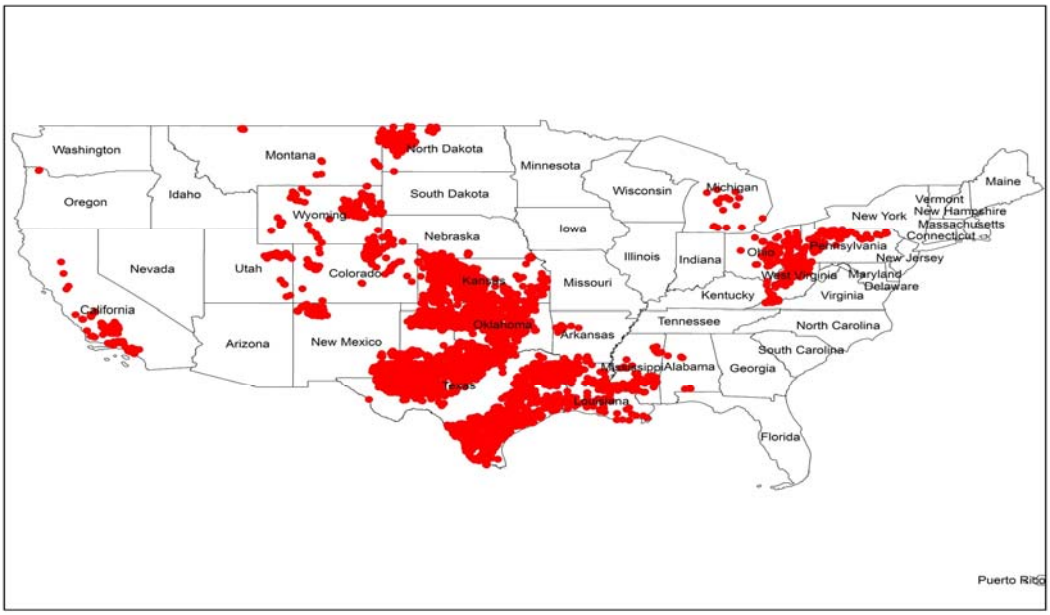
B. Petitioners are irreparably harmed by the elimination of requirements at low production well sites.

Absent a stay, the Rollback Rule will allow low production well sites to emit an additional 6,100 tons of VOCs, 230 tons of hazardous air pollution, and 22,000 tons of methane in 2021. A88 tbl.5. These wells' additional methane emissions will have a near-term climate impact of nearly 400,000 cars driving for one year or over 2 billion pounds of coal burned. A206 (¶13).

These wells are located throughout the nation, often in close proximity to homes and communities. Roughly 350,000 people, including 166,000 people of color and 56,000 people living below the poverty line, reside within a half mile of a low production well site that,

absent a stay, will no longer be subject to federal leak monitoring requirements. A97 (¶43). More than 36 million people live in counties with affected wells in ozone nonattainment areas. A95 (¶40). EDF alone has more than 68,000 members living in ozone nonattainment areas that contain affected low production well sites, and over 800 members who live within one mile of an affected well site. A491 (¶¶14-15).

Figure 1: Map of Affected Low Production Well Sites (A86)



Center for Biological Diversity member Casey Camp-Horinek, an Elder in the Ponca Tribe in Oklahoma, has witnessed the adverse health impacts of oil and gas pollution in her community, where there

are 40 affected low production wells. A504-A505, A509 (¶¶1, 4, 16). Many in Ms. Camp-Horinek's community suffer from cancer and autoimmune disease. A505 (¶4). Ms. Camp-Horinek is concerned about increased air pollution worsening the "skyrocketing asthma epidemic" in her community, which affects three of her children and six of her grandchildren. *Id.*

Absent a stay, the challenged provisions of the Rollback Rule will directly and immediately increase dangerous pollution that adversely affects Petitioners' members, starting as soon as November 16. This harm cannot be reversed or remediated.

III. The Public Interest and Balance of the Equities Favor a Stay.

The leak detection and repair requirements in the 2016 Rule have been fully implemented by industry—with no evidence of hardship—for more than three years, delivering critical air pollution reductions. The public benefits from keeping these protections in place, explained *supra* pp. 21-26, far outweigh the modest expenditures companies may incur due to continued compliance. *See Beame*, 434 U.S. at 1313-14 ("adverse economic effect[s]" do not outweigh "the irreparable injury that air pollution may cause").

As discussed *supra* p. 7, the cost of these protections is a miniscule fraction of both the capital costs incurred and average revenues produced by companies. A369-A370, A373 (¶¶9, 14). Even low production wells are owned by large companies that operate multiple wells and make millions in revenue each year. A517-A518. Leak mitigation costs at low production wells represent roughly 1% of these sites' annual revenue. A371 (¶11). Indeed, when EPA assessed the regulatory effects of the 2016 Rule it concluded that *all* compliance costs (the two at issue here are just a subset) would reduce new drilling by only a fraction of 1%. *See* A376 (¶22) (change in drilling attributable to 2016 Rule requirements equivalent to a $0.01 change in oil or gas prices).

The balance of equities and the public interest overwhelmingly favor issuing a stay and retaining the over-three-year status quo.

CONCLUSION

Petitioners respectfully request that the Court stay the provisions of the Rollback Rule weakening standards for compressor stations (40 C.F.R. § 60.5397a(g)(2)) and eliminating standards for low production wells (40 C.F.R. § 60.5397a(a)(1)(i)-(ii)) pending review.

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Respectfully submitted,

/s/ *Rosalie Winn*

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CERTIFICATE OF COMPLIANCE

I certify that the forgoing motion was printed in a proportionally spaced font of 14 points and that, according to the word-count program in Microsoft Word 2016, it contains 5,195 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2020, I served the foregoing Motion for a Stay Pending Review on all parties through the Court's electronic filing (ECF) system.

DATED: November 13, 2020

/s/ *Rosalie Winn*
Rosalie Winn