

April 15, 2021

The Honorable Paul Tonko
Chairman
Subcommittee on Environment and Climate
Change
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC

The Honorable David McKinley
Ranking Member
Subcommittee on Environment and Climate
Change
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC

Chairman Tonko and
Ranking Member McKinley:

The Independent Petroleum Association of America (IPAA) submits the following materials regarding provisions of the CLEAN Future Act.

IPAA represents thousands of America's independent oil and natural gas producers. Our members are the primary producers of the nation's oil and natural gas and account for 83 percent of America's oil production and 90 percent of its natural gas output. These independent producers are a driving force in our economy and support roughly 4.5 million jobs in the United States. IPAA member companies are innovative leaders and broke the code to usher in the shale oil and natural gas revolution in the United States.

As the United States and the world struggle to rebound from the economic hardship caused by the COVID-19 pandemic, it is essential for America to continue to be a leader in energy development. All forms of energy will be needed in the coming years and natural gas and oil produced in the United States will be a key component of that energy mix. Oil and natural gas will not be the only energy source for the United States, but they will be essential to the American economy for years to come.

The choices the nation makes regarding the energy mix will have a huge impact on its economy and its international position. If America does not pursue a thoughtful energy policy, the nation will suffer economically. Unless demand for fossil energy changes dramatically, efforts to suppress U.S. oil and natural gas production will be counterproductive to the goals of addressing greenhouse gas emissions, increasing job growth and expanding America's impact around the globe. Energy is a geopolitical issue. For the last half-century, American foreign policy has been predicated on the nation's vulnerability to oil and natural gas supply disruptions. The shale revolution turned the United States into an energy superpower, has enhanced American national security and created significant geopolitical advantages for this nation around the globe.

Additionally, natural gas production and use has created the cleanest air quality the nation has seen in two decades. The United States has become the envy of nations for its dedication to reliable, affordable, responsible energy production.

Independent producers recognize the need to manage their emissions, including methane emissions. Over the past several years, as methane regulations have been developed, IPAA has been active in trying to assure that the regulations are designed appropriately for the diverse elements of the industry, including the small business operations that dominate ownership of low producing wells.

It is in this context that IPAA addresses a number of provisions in the CLEAN Future Act.

Sections Unrelated to the Stated Objective of the CLEAN Future Act

This portion of these comments addresses sections of the bill that are unrelated to its stated objective – to achieve net zero greenhouse gas pollution, combat the climate crisis, put Americans back to work, and rebuild our economy – but would adversely affect America’s ability to produce its essential energy. These are discussed below.

Sec. 621. ENHANCING UNDERGROUND INJECTION CONTROLS FOR ENHANCED OIL RECOVERY. *Amends the Safe Drinking Water Act (SDWA) to create a new class of underground injection wells for enhanced oil recovery using carbon dioxide to protect potential sources of drinking water and ensure increasing sequestration of carbon.*

This section unnecessarily alters current actions to use the carbon dioxide enhanced oil recovery (EOR) process without an attendant environmental benefit.

Carbon dioxide EOR wells have been used for over 40 years. They are effectively managed by the states through primacy delegation under the SDWA. These wells fall under the Class II designation. There is no indication that current Class II management of these operations has not appropriately protected ground water.

Removing EOR wells from Class II management would do nothing but put undue burdens on the states to regulate the wells as a separate accounting entity only. Under current UIC Regulations in place at both the Federal and State levels, the wells are operated in a manner to protect potential sources of drinking water. Passing legislation to reclassify a well type will only add burdens on the States. It will not change regulatory protection relative to potential sources of drinking water.

Additionally, carbon dioxide injection into oil reservoirs is performed at specific volumes to enhance oil recovery. Frequently, EOR wells are managed using a patterned approach that requires wells to be used for both injection and production at different times. Creating an entirely new class of wells for EOR unnecessarily requires permitting of all EOR wells under both Class II and Class VII, to allow for multiple uses.

Moreover, requirements for increasing net sequestration of carbon dioxide on a per well basis are inconsistent with how EOR fields operate and are unworkable. EOR operations have separate injection wells and production wells. An injection well only injects carbon dioxide and does not produce oil or carbon dioxide. Therefore, net sequestration cannot be calculated for individual wells. Net sequestration can only be calculated on the whole-field level. Individual well permitting is not a tool that can be practically used for such requirements.

Increasing the sequestration of carbon in a carbon dioxide EOR strictly for the purpose of increasing sequestration of carbon is not economically feasible for the EOR being performed.

Sec. 623. SAFE HYDRATION IS AN AMERICAN RIGHT IN ENERGY DEVELOPMENT. *Amends SDWA to require monitoring and testing of underground sources of drinking water in connection with hydraulic fracturing operations in order to identify potential contamination.*

This section solves no problem. It merely burdens the permitting and operation of oil and natural gas production by inserting new federal requirements into issues already being addressed by states in areas where concerns with ground water exist.

The nature of pressure dynamics and natural laws of fluid flow through porous media demonstrate no need for additional monitoring or testing immediately after hydraulic fracturing is completed. These actions would provide little to no benefit in the protection of underground sources of drinking water. Once a hydraulic fracturing job is complete and the well is opened for production, the fluids used during the job are returned to the surface. A baseline capture of the water quality prior to the job and subsequent testing of the same sample location at a later date is already done in a number of state programs and is being encouraged in more. Additional monitoring or testing would not provide any incremental environmental benefit relative to the hydraulic fracturing procedure.

No change in federal regulation is needed at this time because many states have already addressed this issue relative to their regional needs. Any effort to address baseline water quality is best addressed by the states where approval of drilling permits can mandate additional testing where it is appropriate.

Sec. 624. ADDRESSING HAZARDOUS AIR POLLUTION FROM OIL AND GAS SOURCES. *Eliminates an exemption under the CAA for emissions from oil and gas exploration and production and establishes hydrogen sulfide as a hazardous air pollutant under the CAA.*

This section alters the CAA to make changes that were previously addressed by Congress and are wholly unnecessary.

The first change in this proposed modification of the CAA would remove a provision that affects the framing of air toxics regulations of multiple oil and natural gas facilities. It is a provision that Congress added to address differences in the nature of oil and natural gas production facilities. Additionally, changes in both regulation and the industry since the 1990 CAA have altered its operation.

At the time that it was establishing the current air toxics program in 1990, Congress considered carefully how these provisions should apply to the unique circumstances of oil and natural gas exploration and production activities. Given the varied types of industrial operations in the U.S., Congress chose to apply the air toxics requirements under the CAA only to “major sources” of air pollution, which it defined as stationary sources or groups of stationary sources located within a contiguous area and under common control that emit more than 10 tons per year of any hazardous air pollutant (or 25 tons per year of all hazardous pollutants). For typical manufacturing facilities, these provisions are intended to ensure that buildings that are part of the same manufacturing facility or industrial complex will be considered together as a single source of air emissions because they are typically concentrated in a small area in an urban setting, present potential risks to the same neighboring residents and are subject to common ownership and control and therefore can be addressed efficiently through a coordinated set of emission control devices.

However, Congress recognized that oil and natural gas exploration and production facilities differ from manufacturing facilities and similar industrial operations in several key respects. First, while an oil and natural gas operator may have a number of active wells in an oil or gas field, these wells may be spread out over many square miles and each well site could have a different landowner. As Congress noted, these oil and natural gas operations are typically “located in remote areas, with wells and equipment widely dispersed geographically, rather than concentrated in a single area” as would be the case with a manufacturing facility. Moreover, Congress recognized that many of these wells have low emissions of air toxics and therefore present minimal risk to human health even for those few people who may live in the general vicinity of a well.

At the same time, Congress was well aware that “oil and natural gas production provides a crucial national security service to our Nation without posing a threat to our national health through the very low level of emissions which result from oil and natural gas exploration and production.” In light of these factors, Congress reasonably found that “[t]o aggregate [these well sites] and to treat them in the same way we would treat urban point sources, for example, simply is not necessary from the point of view of public health and we put an impossible burden both in terms of cost and in terms of regulation on many of these wells.” Accordingly, Congress specifically provided in establishing this air toxics regulatory program under section 112 of the CAA that emissions from oil and natural gas exploration and production wells are not to be aggregated or lumped together to determine whether these wells qualify as “major sources” of air toxics that would automatically be subject to the requirements applicable to these types of pollutants.

In spite of the fundamental differences between oil and natural gas well sites and conventional industrial facilities, Congress nevertheless did not ignore the need to control emissions of hazardous air pollutants from oil and natural gas production facilities. In fact, in addition to directing EPA to regulate emissions of hazardous air pollutants from “major sources,” Congress also gave the Agency the authority to regulate emissions of hazardous air pollutants from stationary sources that do not emit air toxics in sufficient quantities to qualify as “major sources.” These lesser sources of emissions are known as “area sources” and Congress in 1990 specified that EPA was to take steps to control emissions from area sources representing 90 percent of the emissions of those hazardous air pollutants presenting the greatest threat to public health in the largest number of urban areas. As part of this program, Congress specifically provided that emissions from oil and natural gas production wells could be aggregated together and regulated as an “area source” under certain circumstances if EPA found that the emissions of air toxics from these production wells presented more than a negligible risk to human health. Thus, Congress took steps to address the most significant threats to human health from air toxics emitted by all facilities, including oil and natural gas exploration and production facilities.

Consistent with this authority, EPA has already taken specific steps to regulate the principal source of hazardous air pollutant emissions from oil and natural gas well sites, i.e., triethylene glycol (TEG) dehydration units. (These TEG dehydration units are used to remove excess water vapor from natural gas before it enters transmission pipelines.) EPA has imposed regulatory requirements on these dehydration units at oil and natural gas well sites, especially when they are located in more urbanized areas where there is a greater possibility of people being exposed to the emissions from these units. In these areas emissions from TEG dehydration units must be vented to an appropriate control device that will ensure that any hazardous air pollutants are

reduced to an acceptable level, make process changes to ensure an equivalent reduction in emissions of hazardous air pollutants or demonstrate that no controls are necessary in a particular case. In addition, EPA has taken steps to regulate other potential sources of hazardous air pollutants at oil and natural gas well sites such as certain types of engines.

Since 1990, the larger issue of aggregation of oil and natural gas operations has been addressed by EPA. In addition to the issues raised in the context of air toxics regulations, similar aggregation questions developed related to Volatile Organic Compound (VOC) regulation. In 2016, EPA finalized regulations that define the conditions used for aggregating oil and natural gas facilities. EPA uses three key factors to determine whether a source needs a permit and the type of permit required. The factors are whether equipment and activities are: (1) in the same industrial grouping (defined by standard industrial classification code, or “SIC code”), (2) under the control of the same person/people, and (3) located on contiguous or adjacent properties. This framework is largely consistent with the approach applied to air toxics regulations.

Additionally, the advent of shale oil and shale natural gas production has changed the nature of oil and natural gas production. In 1990, wells were drilled at small, numerous wellsites of one or two wells. The development of nonconventional shale oil and shale natural gas using hydraulic fracturing and horizontal well bores changes the surface footprint and concentrates operations of multiple wells at one site.

Moreover, Congress’s decision to limit the circumstances under which emissions from widely scattered well sites can be aggregated together for purposes of CAA regulation does not mean that states cannot choose to exercise their own independent authority to regulate emissions of air toxics from oil and natural gas production wells. Regardless of the federal provisions, the states nevertheless still retain the authority to apply more stringent regulations to sources of air emissions if they are concerned that emissions present risks to human health in particular cases. States likewise retain the authority to address certain emissions from well sites as a part of regulations to address nonattainment with NAAQS. In fact, states are generally in a better position than EPA to address issues related to air emissions that may be unique to specific areas of the country.

The second provision in this proposed section addresses the regulation of hydrogen sulfide as an air toxic.

While creating the air toxics program in 1990, Congress also considered how to address the emissions of hydrogen sulfide from oil and natural gas wells in light of concerns that were raised about these emissions during congressional hearings. After closely reviewing this issue, Congress eventually determined that there was a minimal risk to human health and the environment associated with routine emissions of hydrogen sulfide from oil and natural gas wells and that this situation did not warrant listing hydrogen sulfide as a hazardous air pollutant under the CAA. However, Congress also concluded at that time that accidental releases of hydrogen sulfide could present a more significant issue and that hydrogen sulfide should therefore be regulated under the key risk management provisions of the CAA, which establish a program specifically designed to address the potential for accidental, large-scale releases of air toxics from various facilities.

At the same time, Congress required EPA to undertake a further study of the potential hazards to human health and the environment resulting from hydrogen sulfide emissions associated with oil and natural gas production. EPA completed its report during the Clinton Administration and

submitted it to Congress in October 1993. Based on its extensive review of the issue, EPA concluded that “there appears to be no evidence that a significant threat to public health or the environment exists from routine emissions [of hydrogen sulfide] from ... oil and natural gas wells.” Consistent with these findings, EPA continues to regulate accidental releases of hydrogen sulfide as part of its overall risk management provisions under the CAA, but still leaves the regulation of routine emissions of hydrogen sulfide from oil and natural gas wells to the states.

In enacting the CAA, Congress determined that it would not be in the national interest to impede the production of critical oil and natural gas supplies by imposing unnecessary regulatory burdens on operators of these wells. For example, in considering the imposition of hazardous air pollutant controls, Congress recognized that oil and natural gas production facilities are different in several key respects from the types of manufacturing facilities located in urban environments that Congress viewed as the principal source of risk from these pollutants. Given these circumstances, Congress reasonably decided that different treatment of oil and natural gas production wells was appropriate in light of their scattered nature, their location in rural areas, and the minimal risk posed by emissions of air toxics from these wells.

At the same time, Congress left both EPA and the states with adequate authority to regulate specific risks posed by emissions of air toxics or NAAQS nonattainment from oil and natural gas well sites and both EPA and the states have exercised that authority. Thus, Congress’s approach to the regulation of emissions of air toxics from oil and natural gas well sites has not resulted in any significant risk to human health and remains a very effective approach. There is no reason to make the changes proposed by this section of the CLEAN Future Act.

Sec. 625. CLOSING LOOPHOLES AND ENDING ARBITRARY AND NEEDLESS EVASION OF REGULATIONS. *Eliminates an exemption under the SWDA for oil and gas exploration and production wastes.*

This section of the CLEAN Future Act would make significant and inappropriate changes to the SWDA that is based on a completely inaccurate characterization of the provisions it alters despite its pejorative title. The first change alters Subtitle C of the law.

Enacted in 1976, the Resource Conservation and Recovery Act (RCRA) was passed to achieve three key goals: namely, to (1) conserve energy and natural resources, (2) reduce or eliminate the generation of hazardous waste as expeditiously as possible, and (3) protect human health and the environment. Congress subsequently amended RCRA in 1980 to address a number of key new issues raised in implementing this law, and then again in 1984 when it adopted the Hazardous and Solid Waste Amendments (HSWA) Act; HSWA established further waste cleanup and corrective action requirements, restrictions that prohibit the disposal of certain wastes in or on the land unless the wastes comply with specified treatment standards and/or waste constituent levels, and various other technical requirements for the management and disposal of solid and hazardous wastes.

One of the key portions of RCRA — Subtitle C — is intended to effectively control the management and disposal of hazardous waste from “cradle to grave.” The waste management framework established by Subtitle C is designed principally to address “low volume,” “high toxicity” wastes generated at one site and transported to another for disposal. Consistent with this framework, RCRA bans the disposal of “hazardous wastes” — which are broadly defined under the statute — at facilities without valid permits. In order to obtain a permit, any new treatment, storage or disposal facility must meet stringent specifications for handling RCRA

Subtitle C or hazardous wastes. Permitted facilities are subject to a wide range of management standards mandating ground-water protection, facility closure, and post-closure care requirements. Other specific management standards apply to targeted waste management units such as containers, tanks, surface impoundments, waste piles, land treatment units, landfills and incinerators.

RCRA also establishes a comprehensive system designed to closely track the generation, storage, transport and disposal of Subtitle C wastes. Any company which generates these wastes above certain threshold amounts must register with EPA and/or an authorized state agency and comply with their requirements. These generators also must satisfy applicable recordkeeping and waste marking, labeling and placarding requirements in preparing wastes prior to shipment for off-site disposal. The Act provides that EPA may delegate to the states the authority to administer and enforce these various regulatory requirements and in the case of most states, the Agency has done so.

Taken together, the Subtitle C requirements impose costly and rigorous limitations — constraints that were made more demanding by the 1984 HSWA Act. However, RCRA’s broad definition of hazardous waste had the effect of expanding RCRA’s scope well beyond the “low volume,” “high toxicity” wastes it was originally designed to cover.

As a result of regulations proposed by EPA in 1978 to implement the 1976 Act, Congress recognized that certain types of wastes presented unique issues and were most likely not well suited to regulation under EPA’s highly prescriptive Subtitle C regulatory scheme. These concerns particularly applied to those wastes that were produced in substantial volumes but also had relatively low toxicity. In fact, these wastes posed management issues that were far different than the issues posed by Subtitle C wastes generated by manufacturing and other industrial operations under routine circumstances.

One particular category of these “high-volume, “low-toxicity” wastes consisted of drilling fluids, produced waters and other wastes associated with the exploration and production of oil and natural gas. In the course of early deliberations concerning potential amendments to RCRA, Congress specifically considered regulations for these categories of wastes that had previously been proposed by EPA. However, after careful deliberation Congress found that the extensive regulatory program proposed by EPA to regulate drilling fluids, produced waters and related wastes, i.e., wastes generated from oil and natural gas exploration and production operations, could have a significant economic impact on American oil and natural gas production. Moreover, Congress also recognized that the large volumes of these wastes really could not be handled by existing waste management units. Based on these concerns, Congress concluded that these wastes should be subject to a different regulatory scheme than other more “mainstream” Subtitle C wastes.

Congress specifically considered the proper way to handle these “high-volume,” “low-toxicity” wastes in addressing changes to RCRA in 1980. After considering a wealth of information, Congress decided that instead of specifically including these wastes under the general Subtitle C waste management program, EPA should instead set up a specialized way to address the need for any regulatory controls for these wastes. As part of this specified process, Congress first required EPA to study how these wastes were being managed by the states at that time and whether such existing management practices were adequate in light of the nature of these wastes. As part of this process, EPA was specifically required to look at the sources and volume of

drilling fluids, produced water and other “high-volume,” “low-toxicity” wastes associated with oil and natural gas exploration and production; potential risks to human health and the environment from surface runoff or leaching from these wastes; existing disposal practices, alternatives to such practices and the costs of these alternatives; and the impact of any alternatives on oil and natural gas exploration and production.

Once this study was completed, EPA was required to submit it to Congress for its review. EPA was further required under this specialized process to make a determination within six months from the time the report was given to Congress regarding whether the imposition of any additional regulatory controls on “high-volume,” “low-toxicity” wastes was warranted. In the event that the Agency subsequently determined that drilling fluids, produced waters and related categories of wastes should be regulated under the standard RCRA Subtitle C waste management controls, Congress directed that any regulations implementing such a decision would not become effective unless specifically approved by Congress. In amending RCRA in 1980 Congress applied a similar process to other similar types of “high-volume,” “low-toxicity” waste such as fly ash waste and slag wastes, noting that such amendments were necessary to “bring the implementation of the Act closer to the original intent of Congress.”

As a result of this mandated study, EPA subsequently determined that “high-volume,” “low-toxicity” wastes associated with oil and natural gas production should not be regulated under the RCRA Subtitle C waste management program (1988 Regulatory Determination). In reaching this conclusion, the Agency first confirmed that the wastes produced in connection with oil and natural gas exploration and production were being produced in substantial quantities. For example, EPA found that 361 million barrels of drilling waste were generated in 1985 as the result of drilling activities at about 70,000 well sites and that over 800,000 active well sites generated 20.9 billion barrels of produced water. Perhaps even more important, EPA also found in this study that a wide range of practices for the management of such waste had already been effectively adopted under various state regulatory programs as a result of widely varying geological, ecological, topographic, economic, geographic and other differences among well sites.

Based on these findings EPA’s study came to the conclusion that imposing any form of RCRA Subtitle C waste management controls on these types of oil and natural gas exploration and production wastes was not effective and would not only result in substantial economic hardships for the oil and natural gas industry, but would also place severe and undue administrative burdens on regulated oil and natural gas companies and regulatory authorities themselves. For example, EPA’s 1988 study found that:

1. Imposing strict Subtitle C waste management controls on the handling and management of “high-volume,” “low-toxicity” wastes could impose costs on the oil and natural gas industry exceeding \$6.7 billion;
2. Imposing these controls could also lead to declines in oil and natural gas production of up to 12 percent and costs to consumers of approximately \$4.5 billion;
3. The current RCRA program did not provide adequate flexibility for addressing this specialized class of wastes;
4. Regulating oil and natural gas exploration and production wastes under the strict Subtitle C waste management controls could lead to severe permitting delays that

- would disrupt production of vital American energy supplies and could severely strain the existing capacity of facilities authorized to treat and dispose of hazardous wastes;
5. Existing state and federal regulatory programs were generally adequate to manage oil and natural gas wastes and any gaps in these regulatory programs could be effectively addressed by regulation under RCRA programs for non-hazardous waste (Subtitle D) and by working with the states on their regulatory programs;
 6. The state regulatory programs were specifically tailored to the unique circumstances of the oil and natural gas industry and it would be impractical and inefficient to impose the relatively inflexible RCRA Subtitle C waste regulations on oil and natural gas exploration and production wastes because of the potential for disrupting these state regulatory programs; and
 7. Substantial burdens would be imposed on EPA and state regulatory authorities if even a small percentage of the hundreds of thousands of oil and natural gas exploration and production facilities were required to obtain permits to treat, store or dispose of waste under the RCRA Subtitle C waste management program.

In light of this independent review, EPA's decision not to regulate these "high-volume," "low-toxicity" wastes from oil and natural gas exploration and development was a careful decision based on sound science and technical support.

In the years since it made its original determination, EPA has still not found it necessary to revisit its determination or change its conclusions regarding the inappropriateness of regulating these oil and natural gas wastes under the RCRA Subtitle C waste management system despite efforts to compel it to do so.

This section of the CLEAN Future Act would remove the current well-structured provisions and require EPA to apply Subtitle C to oil and natural gas wastes. There is no justification for such action.

The second part of the section addresses the management of oil and natural gas wastes under Subtitle D of RCRA. Subtitle D regulates nonhazardous wastes including municipal wastes and industrial wastes with no ability for the federal government to directly regulate; Subtitle D is not a delegated authority like Subtitle C. EPA can withhold state grants but grant funding is insignificant.

Subtitle D frames very general authority for EPA. There are some provisions that provide EPA authority to develop federal initiatives. These are:

40 CFR, Part 257 – **Criteria for Classification of Solid Waste Disposal Facilities and Practices** - establishes regulatory standards to satisfy the minimum national performance criteria for sanitary landfills. These criteria established standards for determining whether solid waste disposal facilities and practices may pose adverse effects on human health and the environment. Facilities that fail to meet the criteria are "[illegal dumps](#)" for purposes of state solid waste management planning efforts under Subtitle D. *The criteria provide the basis for enforcing the prohibition on "open dumps" and may be used by citizens' suits in Federal District Court.*

40 CFR, Part 256 – Guidelines for Development and Implementation of State Solid Waste Management Plans – establish the elements that state solid waste management plans must contain to qualify under RCRA Subtitle D.

EPA has rarely utilized its authority under these sections of RCRA.

However, each of these sections include requirements that EPA must review its Subtitle D programs every 3 years and determine whether it needs to develop federal regulations and state guidelines or if the current programs, including state regulations, are adequate.

Following the 1988 Regulatory Determination, environmental groups initiated actions to press for federal regulation of production wastes. After recurring failures to force management of production wastes under Subtitle C, environmental groups turned to Subtitle D. In 2016, EIP, NRDC and other environmental groups filed litigation against EPA seeking action to require EPA to act under Subtitle D with regard to production wastes. The environmental groups targeted two issues:

1. EPA statements in its 1988 Regulatory Determination regarding production wastes and RCRA Subtitle D; and,
2. EPA's failure to meet a mandatory RCRA requirement regarding determinations of whether it needs to develop RCRA Subtitle D regulations and state guidelines.

The litigation sought to compel EPA to act. The environmental groups argued that EPA indicated it intended to develop some production wastes regulations under Subtitle D but it had failed to do so. They argued that EPA failed to act on a mandatory duty in RCRA to determine every 3 years if it needs to develop Subtitle D regulations (a general mandate but raised here in the context of production wastes) for 27 years. They argued that EPA failed to act on a mandatory duty in RCRA to determine every 3 years if it needs to develop Subtitle D state guidelines (a general mandate but raised here in the context of production wastes) for 18 years. The environmental groups asked the court to order EPA to act and to require it to develop Subtitle D production waste regulations.

EPA agreed to a Consent Decree in December 2016. The Consent Decree contained two major requirements.

1. Under the Consent Decree, by March 15, 2019, EPA had to propose revisions or determine it does not need to revise criteria regulations for oil and natural gas production wastes under Subtitle D (40 CFR, Part 257).
2. Under the Consent Decree, by March 15, 2019, EPA had to propose revisions or determine it does not need to revise state plan guidelines for oil and natural gas production wastes under Subtitle D (40 CFR, Part 256).

Significantly, the Consent Decree did not require EPA to develop regulations and guidelines. Moreover, if EPA developed Subtitle D production waste regulations and state guidelines, it cannot compel states to adopt them. However, such regulations could open a pathway for citizen suits against individual producers under federal law for failure to comply with the federal regulations even if the producer complied with state regulations.

In 2019, EPA stated the results of its review as follows:

Based on the information gathered for this review, EPA concludes that revisions to the federal regulations for the management of exploration, development and production wastes of crude oil, natural gas and geothermal energy under Subtitle D of RCRA (title 40 of the Code of Federal Regulations in Part 257) are not necessary at this time. ... EPA will continue to work with states and other organizations to identify areas for continued improvement and to address emerging issues to ensure that exploration, development and production wastes continue to be managed in a manner that is protective of human health and the environment.

State regulatory organizations including the Interstate Oil and Gas Compact Commission and the Ground Water Protection Council continue to work with EPA as it revisits this decision during its periodic cycles.

The proposed CLEAN Future Act section would mandate that EPA develop Subtitle D regulations despite the fact the EPA just concluded they are not necessary and continues to work with states to assure that state programs are managing these wastes appropriately. The driving force for this section has little to do with effective waste management. It is primarily created to generate regulations that will likely differ from state programs with the expectation that states will not adopt them. Then, RCRA provides a pathway for nuisance suits against individual producer who comply with state regulations but not with the federal guideline regulations.

Implications of Sections 621,623, 624 and 625

Taken together, these sections do not comport with the objectives of the CLEAN Future Act. Instead, they are wedged into the bill solely to reduce or prevent the development of American oil and natural gas. Sections 621 and 623 create unnecessary burdens on state programs to implement new requirements without any justification. Sections 624 and 625 regurgitate the same stale, unjustified proposals that have been shopped by ardent anti-oil and natural gas environmentalists for years. The Committee, the House and the Congress should reject all of them.

Super Pollutants Provisions

The CLEAN Future Act contains provisions that address methane or carbon dioxide emissions from oil and natural gas production operations that generate unworkable outcomes.

Sec. 701. CONTROLLING METHANE EMISSIONS FROM THE OIL AND NATURAL GAS SECTOR.

Establishes national goals for reducing methane emissions from the oil and natural gas sector to achieve a 65 percent reduction below 2012 levels by 2025, and a 90 percent reduction below 2012 levels by 2030. Directs EPA to promulgate new rules to meet the national goals, covering every segment of the oil and natural gas system. To achieve the 2025 national goal, EPA must finalize regulations under CAA section 111 no later than December 31, 2022; states then have one year to submit plans, and EPA has two years to prescribe a federal plan, if necessary. To achieve the 2030 national goal, requires EPA to finalize regulations no later than December 31, 2023. Further directs EPA to include standards for new and existing natural gas transmission and distribution pipelines, new and existing sources with equipment that handles liquefied

natural gas, and new and existing offshore petroleum and natural gas production facilities. Defines terms used in the section.

Setting aside whether the goals are feasible or even based on sound assumptions, the section requires action that fails to recognize the fundamental timelines of requirements of the CAA. The little used Section 111(d) is triggered with shortened time frames while ignoring the requirements of the Administrative Procedure Act thereby placing unrealistic burdens on states to produce regulatory programs.

Sec. 702. CONTROLLING FLARING. *Directs EPA to finalize, no later than December 31, 2022, regulations under CAA section 111 to prohibit routine flaring from natural gas sources, as well as regulations to reduce routine flaring from existing sources by 80 percent and 100 percent below 2017 levels by 2025 and 2028, respectively. Provides for definitions used in the section, including a definition of “safety flaring,” meaning flaring of natural gas that is required to ensure safe operation of the facility due to unforeseen conditions. Excludes safety flaring from the definition of routine flaring.*

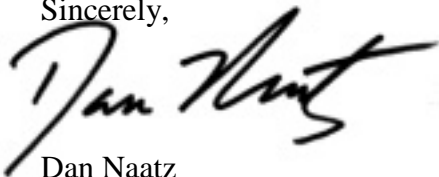
This section requires EPA to use the authority of Section 111 to produce specific reductions in routine flaring. Setting aside the question of what constitutes routine flaring because no producer willingly chooses to flare, Section 111 produces technology requirements based on Best System of Emissions Reductions (BSER). BSER is determined by what types of technology meets its definition and may or may not result in the desired targeted reductions, particularly for existing sources.

Carbon Dioxide Geologic Sequestration

IPAA supports the funding authority in Section 502 to provide for state permitting of Class VI underground injection wells.

Thank you for the opportunity to express these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Naatz", written in a cursive style.

Dan Naatz
Executive Vice President