

**Commonwealth of Massachusetts,
California, District of Columbia, Illinois, Maine, Maryland, New York,
Rhode Island, Vermont**

April 3, 2017

Honorable Scott Pruitt
U.S. Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C., 20460

Re: Withdrawal of Information Collection Request (ICR) for the Oil and Natural Gas Industry, EPA ICR No. 2548.01 (Final Methane ICR)

Dear Administrator Pruitt:

We, the undersigned states, write to express our strong disagreement with your decision to withdraw the Final Methane ICR issued on November 10, 2016, regarding the Environmental Protection Agency's ("EPA") effort to regulate methane emissions from existing sources within the oil and gas sector pursuant to Clean Air Act section 111(d), 42 U.S.C. § 7411(d) ("Section 111(d)"). We urge you to reconsider that decision, or otherwise explain how EPA intends to fulfill its legal obligation to address methane leaks that are endangering public health and welfare.

You unilaterally withdrew the Final Methane ICR on March 2 with no meaningful explanation, let alone a reasoned one. The public had no window into the basis for your decision, and no understanding of how it relates to EPA's obligation to protect public health and the environment. We are troubled that your decision to withdraw the Final Methane ICR occurred immediately after the states of Texas, Alabama, Arizona, Kansas, Kentucky, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, and West Virginia wrote to you on March 1 requesting that you suspend and withdraw the ICR. These are the very states with whom you personally collaborated closely on your previous legal challenges to multiple EPA efforts to reduce greenhouse gas emissions, including the oil and gas sector methane new source performance standard issued pursuant to Clean Air Act section 111(b), 42 U.S.C. § 7411(b) ("Section 111(b)"). Despite your stated commitment to transparency, regulatory certainty, and the norms of administrative procedure, you pulled the Final Methane ICR without any opportunity for other states, stakeholders, and the general public to provide input— notwithstanding the fact that the ICR itself had been subject to two rounds of notice and comment prior to its finalization. *See* Proposed Information Collection Request; Comment Request; Information Collection Effort for Oil and Gas Facilities, 81 Fed. Reg. 35,763 (June 3, 2016); Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Collection Effort for Oil and Gas Facilities, 81 Fed. Reg. 66,962 (Sept. 29,

2016). Your arbitrary action demonstrates a disregard on your part for the mechanisms that ensure public participation in important governmental decision-making processes.

Americans are deeply concerned about the impacts of climate change, which are already being felt across the United States. Climate change is having a very real, significant, and adverse impact on American families and businesses. Just this month, after drought and unseasonably high temperatures set the stage, wildfires ravaged Kansas, Oklahoma, and Texas, destroying ranchlands and hundreds of heads of cattle, resulting in destruction so vast that ranchers are now referring to the fires as “our Hurricane Katrina.”¹ Our failure to act will only worsen these impacts. *See generally, Our Changing Planet*, U.S. Global Change Research Program for FY 2017 at 2 (hereinafter, “USGCRP Report”) (climate-driven impacts include risks to human health; more frequent and intense storms that threaten food security, infrastructure, and livelihoods; sea level rise and coastal flooding; international stability; and U.S. national security).

The National Aeronautics and Space Administration (“NASA”) and the National Oceanic and Atmospheric Administration (“NOAA”) have confirmed that 2016 was the warmest year on record globally.² NASA observed, “2016 is remarkably the third record year in a row in this series We don’t expect record years every year, but the ongoing long-term warming trend is clear.” *See also* USGCRP Report at 2 (internal citations omitted) (“The global environment is changing rapidly. . . . [G]lobally-averaged temperatures in 2015 shattered the previous record, which was set in 2014; and 2016 is on track to break the 2015 record.”). According to NASA, the Earth’s average temperature has risen about two degrees Fahrenheit since the late nineteenth century, due largely to increased carbon dioxide and other human-made emissions in the atmosphere. And most of that warming has occurred in our lifetimes, in the past thirty-five years. Indeed, sixteen of the seventeen warmest years on record have occurred since 2001.

Methane is a particularly powerful agent of climate change; pound-for-pound, methane warms the climate about thirty-four times more than carbon dioxide over a 100-year period, according to the Intergovernmental Panel on Climate Change, and on a twenty-year timeframe, has about eighty-six times the global warming potential of carbon dioxide. According to EPA, the oil and gas sector is the largest emitter of methane in the U.S., accounting for a third of total U.S. methane emissions.³ Oil and gas production, transmission, and distribution results in

¹ Jack Healy, *Burying Their Cattle, Ranchers Call Wildfires ‘Our Hurricane Katrina’*, N.Y. TIMES (Mar. 20, 2017), <https://www.nytimes.com/2017/03/20/us/burying-their-cattle-ranchers-call-wildfires-our-hurricane-katrina.html?smprod=nytcore-iphone&smid=nytcore-iphone-share>.

² NASA, *NOAA Data Show 2016 Warmest Year on Record Globally*, NASA (Jan. 18, 2017), <https://www.nasa.gov/press-release/nasa-noaa-data-show-2016-warmest-year-on-record-globally>.

³ Chris Mooney, *The U.S. has been Emitting a lot More Methane than we Thought, Says EPA*, WASH. POST (Apr. 15, 2016), https://www.washingtonpost.com/news/energy-environment/wp/2016/04/15/epa-issues-large-upward-revision-to-u-s-methane-emissions/?utm_term=.9e451e916e23. *See also, Emissions of Greenhouse Gases in the U.S.*,

massive leakage of methane to the atmosphere—leakage that not only drives climate change, but also equates to lost revenue for producing states, and producers, transporters, and distributors of natural gas. Catching methane before it escapes to the atmosphere is good for the environment and good for the economy. Every ton of methane leaked to the atmosphere is a ton of methane that cannot be sold, and for producing states, may result in lost tax and royalty benefits. Conserving—not wasting—America’s natural resources and making efficient use of them is a longstanding American value. Indeed, careful management of precious resources will better aid—not undermine—our efforts to become more energy-independent as a nation.

Existing sources within the oil and natural gas sector are projected to make up ninety percent of methane emissions from the sector in 2018.⁴ A 2014 study by ICF International found that industry could cut emissions forty percent below projected 2018 levels at an average annual cost of *less than one cent per thousand cubic feet of natural gas*.⁵ The capital investment required by industry would be \$2.2 billion, representing less than one percent of typical annual industry capital expenditures.⁶ Taking into account the total economic value of natural gas that would be recovered through use of additional emissions controls, a forty percent reduction is achievable and would *yield savings of over \$100 million dollars per year for the U.S. economy and consumers*.⁷ Operators would save, too—cost-effective methane reduction opportunities would generate over \$164 million dollars per year net savings for operators.⁸ States like Colorado and Wyoming have shown that it is possible to cost-effectively control these emissions—and their example has helped lay the groundwork for the federal Clean Air Act standards that are necessary to address this national problem.

Yet, despite these facts, you have done an about-face and withdrawn the Final Methane ICR, which would have allowed EPA to gain valuable information from industry in an effort to tailor a rule that would put in place controls to reduce emissions—in other words, conserve natural gas while generating savings for the American consumer.

Under Section 111(b) of the Clean Air Act, when the EPA administrator determines that a category of sources “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,” the Administrator “shall” include that

U.S. ENERGY INFO. ADMIN. (Mar. 31, 2011), https://www.eia.gov/environment/emissions/ghg_report/ghg_methane.cfm (energy sector is largest source of U.S. methane emissions).

⁴ *Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries*, ICF INT’L 1-1 (2014), https://www.edf.org/sites/default/files/methane_cost_curve_report.pdf.

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ *Id.*

⁸ *Id.* at 4-3.

category on a list of stationary sources. 42 U.S.C. § 7411(b)(1)(A). Pursuant to Section 111(b), EPA previously listed crude oil and natural gas production as a source category that contributes significantly to air pollution that may reasonably be anticipated to endanger public health and welfare. *See Priority List and Additions to the List of Categories of Stationary Sources*, 44 Fed. Reg. 49,222 (Aug. 21, 1979).

Numerous scientific assessments, including, but not limited to, EPA's 2009 endangerment determination,⁹ the assessments of the International Panel on Climate Change, the U.S. Global Change Research Program and the National Academy of Sciences, and scientific studies undertaken by states across the nation, establish that anthropogenic greenhouse gas emissions, including methane, may reasonably be anticipated to endanger public health or welfare. As described above, the oil and natural gas source category causes or contributes significantly to such greenhouse gas air pollution. As well, available technology can effectively and efficiently reduce methane emissions from the oil and natural gas industry. As a result, in 2015, EPA promulgated a final New Source Performance Standard under Clean Air Act Section 111(b) for methane emissions from new and modified oil and natural gas sources. *Oil and Natural Gas Sector Emission Standards for New, Reconstructed and Modified Sources*, 81 Fed. Reg. 35,824 (June 3, 2016).¹⁰

EPA is required to issue performance standards for existing oil and gas sector sources of methane emissions. *See* 42 U.S.C. § 7411(d). While not necessary for purposes of Section 111(d), EPA issued the ICR to assist in its development of standards that would be reasonable and workable for regulated entities. *See, e.g.*, 81 Fed. Reg. 35,764. All stakeholders, including industry, would benefit significantly from a transparent regulatory process designed to solicit key information regarding how the standards could be most effectively implemented.

For all these reasons, we urge you to reconsider your decision and reissue the Final Methane ICR, or otherwise explain how EPA intends to fulfill its legal obligation to address methane pollution under the Clean Air Act.

⁹ *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

¹⁰ On March 28, President Trump issued an Executive Order requiring EPA to review, and if appropriate, publish for notice and comment rules "suspending, revising, or rescinding" the final New Source Performance Standard issued pursuant to Section 111(b) for methane emissions from new and modified oil and natural gas sources. *See* Executive Order, Section 7 (Mar. 28, 2017). Neither the Executive Order, nor any subsequent review, can vitiate EPA's legal obligation under the Clean Air Act to control oil and gas sector methane emissions. States will strongly oppose efforts to withdraw the methane NSPS, and will vigorously pursue legal action to ensure EPA complies with its obligation to regulate oil and gas sector methane emissions.

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