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

No. 20-1359

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

Petitioners

v.

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

Respondents

EMERGENCY MOTION FOR STAY PENDING REVIEW; MOTION FOR SUMMARY VACATUR

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Environmental Defense Fund, Center for Biological Diversity, Clean Air Council, Earthworks, Environmental Integrity Project, Food & Water Watch, Ft. Berthold Protectors of Water and Earth Rights, National Parks Conservation Association, Natural Resources Defense Council, and Sierra Club (collectively, "Petitioners") hereby certify as follows:

(A) Parties and Amici

(i) Parties, Intervenors, and Amici who Appeared in the District Court

This case is a petition for review of final agency action, not an appeal from the ruling of a district court.

(ii) Parties to this Case

Petitioners: Environmental Defense Fund, Sierra Club, Natural Resources Defense Council, National Parks Conservation Association, Ft. Berthold Protectors of Water and Earth Rights, Food & Water Watch, Environmental Integrity Project, Earthworks, Clean Air Council, and Center for Biological Diversity.

Respondents: The United States Environmental Protection Agency ("EPA") and Andrew Wheeler, in his official capacity as Administrator of the EPA.

Intervenors: No parties have moved for leave to intervene at present.

(iii) *Amici* in this Case

None at present.

(iv) Circuit Rule 26.1 Disclosures

See disclosure form included below.

(B) Rulings Under Review

Petitioners seek review of the final action taken by EPA at 85 Fed. Reg. 57,018 (Sept. 14, 2020), entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review." A2-56.[1]

[1] "A" cites are to Plaintiffs' consecutively paginated attachments, filed with this Motion. The attachments include documents cited in this Motion, generally in the order they are cited, as well as standing declarations.

(C) Related Cases

This case has not previously been before this Court or any other court. The States of California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the City of Chicago, the District of Columbia, the City and County of Denver, and the California Air Resources Board filed No. 20-1357 challenging the same rule that Petitioners challenge here.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Petitioners Environmental Defense Fund, Center for Biological Diversity, Clean Air Council, Earthworks, Environmental Integrity Project, Food & Water Watch, Ft. Berthold Protectors of Water and Earth Rights, National Parks Conservation Association, Natural Resources Defense Council, and Sierra Club make the following disclosures:

Environmental Defense Fund

Non-Governmental Corporate Party to this Action: Environmental Defense Fund ("EDF").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: EDF, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to society's most urgent environmental problems.

Center for Biological Diversity

Non-Governmental Corporate Party to this Action: Center for Biological Diversity.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: The Center for Biological Diversity is a non-profit corporation organized and existing under the laws of the State of California that works through science, law, and advocacy to secure a future for all species, great and small, hovering on

the brink of extinction, with a focus on protecting the lands, waters, and climate that species need to survive.

Clean Air Council

Non-Governmental Corporate Party to this Action: Clean Air Council ("CAC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: CAC is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. CAC is a not-for-profit organization focused on protection of public health and the environment.

Earthworks

Non-Governmental Corporate Party to this Action: Earthworks.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Earthworks, a corporation organized and existing under the laws of the District of Columbia, is a national nonprofit organization dedicated to protecting communities and the environment from the impacts of oil, gas, and mineral

development while seeking sustainable solutions to the problems such development can cause.

Environmental Integrity Project

Non-Governmental Corporate Party to this Action: Environmental Integrity Project ("EIP").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: EIP, a corporation organized and existing under the laws of the District of Columbia, is a national nonprofit organization that advocates for more effective enforcement of environmental laws.

Food & Water Watch

Non-Governmental Corporate Party to this Action: Food & Water Watch ("FWW").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: FWW is an Internal Revenue Service 501(c)(3) not-for-profit organization founded in 2005 and incorporated in Washington, D.C. FWW's central mission is to ensure

access to clean drinking water, safe and sustainable food, and a habitable climate system through a system of grassroots community organizing, advocacy, and litigation.

Ft. Berthold Protectors of Water and Earth Rights

Non-Governmental Corporate Party to this Action: Ft. Berthold Protectors of Water and Earth Rights ("Ft. Berthold POWER").

Parent Corporations: Dakota Resources Council.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Ft. Berthold POWER, a corporation organized and existing under the laws of the State of North Dakota, is a local nonprofit organization dedicated to conserving and protecting the land, water, and air on which all life depends.

National Parks Conservation Association

Non-Governmental Corporate Party to this Action: National Parks Conservation Association ("NPCA").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: NPCA, a corporation organized and existing under the laws of the District of Columbia, is a nonprofit

organization that strives to protect and enhance America's National Park System for present and future generations.

Natural Resources Defense Council

Non-Governmental Corporate Party to this Action: Natural Resources Defense Council ("NRDC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: NRDC, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

Sierra Club

Non-Governmental Corporate Party to this Action: Sierra Club.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club is a non-profit corporation organized under the laws of the State of California. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's

resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

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

The undersigned certifies that this Emergency Motion for Stay or Summary Disposition complies with Circuit Rule 18(a).

Movants 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* A58-59. Movants' letter requested that it be immediately stayed pending review. After receiving no response from EPA or its Administrator, movants filed this petition for review and motion for emergency relief on September 15, 2020.

On September 14, the undersigned provided notice of this filing to Eric Hostetler, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

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GLOSSARY

Administrator	Andrew Wheeler, Administrator, Environmental Protection Agency
EPA	Environmental Protection Agency
Rescission Rule	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review Rule, 85 Fed. Reg. 57,018 (Sept. 14, 2020)
Section 110	42 U.S.C. § 7410
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

Natural gas is mostly methane. It is extracted from the ground at gas and oil wells; moves through continuously-connected infrastructure from wells to market; and, ideally, should not escape to the air. But through intentional venting of equipment and unintentional gas leaks, the oil and gas sector has grown into the single largest industrial source of methane emissions in the United States.

Methane is an extremely potent air pollutant. A pound of methane traps over 80 times more climate-destabilizing heat than a pound of carbon dioxide over a 20-year timeframe. Responding to the Clean Air Act's charge to reduce dangerous pollution, in 2016 EPA set methane standards for new sources throughout the oil and gas industry. But following the change in Administration in 2017, the agency launched a campaign to stay, weaken, and rescind these protections. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 14 (D.C. Cir. 2017) (summarily vacating effort to stay standards). That effort culminated yesterday, when the Administrator published a rule rescinding *all* methane controls for an industry that, in the United States alone, emits more climate pollution than 150 different countries.

The Rescission Rule is not premised on any new conclusions regarding the magnitude of pollution from the oil and gas sector, the harms it causes, or the cost-effective and widely-available controls some members of the industry have used for years. Indeed, many major and smaller, independent operators have opposed the repeal. Rather, the Administrator purports to have discovered various legal errors in EPA's prior rulemakings that allegedly require him to rescind those standards now, and maybe fix the errors later. But the alleged errors have no basis in law or the evidentiary record before the agency. The Administrator's transparent effort to manufacture reasons to rescind protections is the epitome of arbitrary and capricious agency action.

The Rescission Rule irreparably harms Petitioners' members. It will result in over 3.3 million metric tons of preventable methane emissions annually—the equivalent of the annual carbon dioxide emissions of over 60 million cars—at a time when immediate *reductions* of this pollutant are critical to avoiding the worst effects of climate change. A96-97 (¶42). It will also result in 700,000 more tons of smog- and soot-forming volatile organic compound ("VOC") emissions and 26,000 more tons of hazardous air pollutant emissions (including

carcinogenic benzene and formaldehyde) each year. *Id*. These emissions significantly threaten the health of the nine million people who live within a half mile of oil and gas sources and contribute to smog and soot pollution that impacts tens of millions more people. A96 (¶41). Once emitted, none of these pollutants can be captured and none of the resulting harms can be reversed.

The Rescission Rule takes effect immediately, forgoing the usual 60-day effective date for significant rules without *any* explanation of why immediate effectiveness is warranted. Thus, as of yesterday, operators were relieved of their responsibility to reduce dangerous pollution from over a thousand new sources, including their quarterly obligation to detect and repair leaks, and their annual obligation to report compliance by October 31. Because EPA, without explanation, departed from usual practice and made the Rescission Rule effective immediately, Petitioners now request an emergency stay, and request that this Court stay or vacate the Rule as soon as possible.

BACKGROUND

Clean Air Act section 111 requires EPA to list "categories of stationary sources" that emit dangerous pollution, 42 U.S.C.

§ 7411(b)(1)(A), and issue "standards of performance" to control emissions from new sources in those categories, *id.* § 7411(b)(1)(B). EPA first listed the oil and gas industry as a Section 111 category in 1979, 44 Fed. Reg. 49,222 (Aug. 21, 1979), and has regulated sources in this category since 1985, *e.g.*, 50 Fed. Reg. 26,122 (June 24, 1985) (standards for VOCs from natural gas processing plants).

The Clean Air Act requires EPA to periodically revise its list of source categories, 42 U.S.C. § 7411(b)(1)(A), and, at least every eight years, to "review and, if appropriate, revise [the] standards" it has set, *id.* § 7411(b)(1)(B). In 2012, EPA conducted that review and updated its standards for VOC emissions from the oil and gas industry. 77 Fed. Reg. 49,490 (Aug. 16, 2012).

In 2016, EPA updated the standards again, this time concluding that methane emissions from the source category significantly contribute to dangerous air pollution and adding standards for methane pollution. 81 Fed. Reg. 35,824, 35,838-40, 35,877 (June 3, 2016) ("2016 Rule"). EPA's 2016 Rule expressly defined the regulated source category to include all interconnected segments of the industry that ready gas for distribution. *Id.* (revising the source category to include oil and natural

gas production, processing, transmission, and storage and making a significant contribution finding for that revised source category). EPA thus established methane standards for all of the equipment and processes that extract gas from the earth, process it into commercial natural gas, and move it to markets.

Critically, because EPA adopted methane standards for new oil and gas sources, the Clean Air Act required EPA to regulate methane from existing sources, 42 U.S.C. § 7411(d), which make up the vast majority of emissions from the oil and gas sector.[2] The same day that EPA issued the 2016 Rule, it began the process to regulate existing sources. 81 Fed. Reg. 35,763 (June 3, 2016); *see* A116-17 ("We will start this work immediately to address methane from existing sources. We intend to work swiftly."); A119-21.

In 2017, EPA abruptly changed course. It immediately halted development of existing source regulations with no opportunity for

[2] Under the Clean Air Act, "new" sources are those whose "construction or modification … is commenced after" publication of proposed regulations prescribing standards. 42 U.S.C. § 7411(a)(2). The remaining sources are considered "existing sources." *Id.* § 7411(a)(6). "Existing sources" for the purposes of the standards at issue here are those that existed on September 18, 2015, the day the 2016 Rule was proposed.

public comment. A130-33, 152-54. EPA then attempted to stay the effectiveness of key new source requirements under the 2016 Rule, again without requesting comments. This Court summarily vacated that action, concluding that it was "arbitrary, capricious, [and] in excess of [EPA's] statutory authority." *Clean Air Council*, 862 F.3d at 8. Subsequently, defending against a lawsuit to enforce the agency's obligation to regulate existing sources, the agency argued that continuing to develop such regulations "would likely be futile" because the agency was planning to rescind methane standards for new sources, and therefore would no longer be obligated to regulate existing ones. A158.

This week, the Administrator took two final actions. Yesterday, September 14, 2020, he issued the Rescission Rule challenged here, which (1) shrinks the regulated oil and gas source category to exclude pollution sources in the transmission and storage (or "downstream") segment of the industry, eliminating all standards for these sources; (2) rescinds methane standards for all new sources in the shrunken source category; and (3) declares that EPA cannot regulate methane from the hundreds of thousands of existing wells and equipment in the

industry. 85 Fed. Reg. at 57,018, 57,040. That Rule took effect yesterday, upon publication. *Id.* at 57,018. Today, September 15, 2020, the Administrator issued a second rule that weakens the remaining standards for VOCs. 85 Fed. Reg. 57,398. Petitioners have separately challenged that Rule, which, consistent with the usual practice, will not be effective for 60 days. *Id.*

STANDARDS 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 injunctive relief; (c) that the balance of equities favors an injunction; and (d) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The final two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Summary vacatur is warranted where the flaws in an agency action are "so clear as to justify expedited action." *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980).

ARGUMENT

I. Petitioners Are Likely to Succeed on the Merits and the Rule's Flaws Are So Clear as to Justify Summary Vacatur.

The core rationales of the Rescission Rule are transparently flimsy, counterfactual, and outcome-driven. While "[a]n agency is generally free to change positions … [t]his flexibility has limits." *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1283-85 (D.C. Cir. 2019). The Administrator blows by those limits here. Petitioners are therefore likely to succeed on the merits. In fact, the arbitrary and capricious nature of the Rescission Rule is so clear that summary vacatur is warranted.

A. Deregulating the downstream segment is contrary to the statute and arbitrary and capricious.

EPA's standards for both methane and VOCs applied to a category of sources that the agency expressly defined in 2016 to encompass emission sources in all segments of the physically- and functionally-interconnected industry. This included sources in the production and processing ("upstream") segments that remove gas from the ground and process it into commercial gas, and in the transmission and storage ("downstream") segment that carries that commercial gas to market. In

the Rescission Rule, the Administrator announced that EPA had "exceed[ed] the reasonable boundaries of [its] authority to revise the source category" when it included all segments in the same category. 85 Fed. Reg. at 57,029. He therefore removed downstream sources from the source category and rescinded all standards for these sources.

The Administrator is flatly wrong. The similarities that EPA relied upon in 2016 more than justified grouping upstream and downstream sources in the same category. The minor distinctions the Administrator now relies on to divide them are completely irrelevant.

EPA's 2016 source category definition was reasonable and well within the agency's statutory authority. Section 111 authorizes EPA to establish and revise "categories of sources." 42 U.S.C. § 7411(b). In the 2016 Rule, EPA expressly found that operations running from wells and processing plants down through pipeline compressor stations and storage tanks constituted a reasonable and logical source category because "[o]perations at production, processing, transmission, and storage facilities are a sequence of functions that are interrelated" and that the same kinds of polluting "equipment (*e.g.*, storage vessels, pneumatic pumps, compressors) are used across the oil and gas

industry." 81 Fed. Reg. at 35,832; *see* A160. Indeed, the 2016 Rule established identical standards for polluting equipment in both the upstream and downstream segments. *See, e.g.*, 40 C.F.R. § 60.5390a (pneumatic controllers); *id.* § 60.5397a (leaks at compressor stations).

EPA has regularly defined categories on similar bases. *See, e.g.*, 44 Fed. Reg. at 49,223 (listing the entire non-metallic mineral processing industry as a single source category "since many of the processes and control techniques are similar"). Likewise, the oil and gas source category as defined in 2016 was consistent with EPA's long-standing interpretation that "[s]ource categories are intended to be broad enough in scope to include *all processes associated with the particular industry*." 45 Fed. Reg. 76,427, 76,427-28 (Nov. 18, 1980) (emphasis added).

Despite these abundant similarities, the Administrator now contends that upstream and downstream sources are "not sufficiently related" to be placed in the same source category. 85 Fed. Reg. at 57,027-29. But his purported factual distinctions are illusory, entirely irrelevant to the question of whether and how to regulate pollution from the sector, and do not require dividing the source category and deregulating all downstream sources.

The Rescission Rule first argues that alleged differences in the gas composition at upstream and downstream sources mandate putting those segments in separate categories. Methane predominates in the gases contained in, and emissions from, equipment in *all* segments of the industry. The composition of the raw gas that comes out of wells varies greatly from basin-to-basin, and is a mixture of methane and other pollutants, including VOCs. Raw gas is then piped to gas processing plants to remove most of the VOCs and other impurities before it is piped further downstream as commercial gas. When leaks or intentional releases occur upstream of the processing plant, they reflect the composition of raw gas, i.e., they are composed mostly of methane, plus some VOCs and other impurities. They generally, but not always, contain more VOCs and other impurities than leaks and releases downstream of the processing plant. But the whole way, methane predominates.

For the purposes of establishing, revising, or rescinding methane standards, the Administrator does not (and cannot) explain why any gas composition difference between the upstream and downstream segments matters. The common element across the sector is methane.

Every molecule of methane that moves through pipelines and compressor stations in the downstream segment originated in the upstream segment. The fact that more *additional* pollutants (VOCs and hazardous air pollutants) are co-emitted with methane upstream has no rational bearing on whether to regulate methane emissions from downstream sources. Indeed, as the Administrator himself explains in another part of the Rescission Rule, "methane and VOC emissions occur through the same emission points and processes, and the same currently available technologies and techniques minimize both pollutants from these emissions sources." 85 Fed. Reg. at 57,051. These are the very reasons EPA cited for including upstream and downstream sources in the same source category in the first place. *Supra* pp. 9-10.[3]

Notably, EPA has established source categories containing sources whose emissions composition vary much more from one unit to the next. For example, EPA's category for industrial-commercial-institutional steam generating units encompasses steam generators that burn wood,

[3] The Administrator goes so far as to say that "the VOC content could be zero" and it would not matter for purposes of regulation. 85 Fed. Reg. at 57,031. In other words, the methane-to-VOC ratio of the gas stream is entirely irrelevant to how source owners control pollution.

solid waste, natural gas, and coal, among other things, with hugely different emissions characteristics. *See* 40 C.F.R. § 60.42b-44.b.

The Administrator also claims supposed differences in the "purposes of the operations" of the upstream and downstream segments require putting them in separate source categories. 85 Fed. Reg. at 57,028. He observes that the "primary purpose" of upstream segments is exploring for, drilling to extract, and processing natural gas to exclude impurities while the "primary operation" of downstream sources is to move the gas to market through pipelines. *Id*. The purpose of the *entire industry* is to provide gas to markets. The industry uses much of the same polluting equipment—compressors, pneumatic pumps, storage tanks—throughout all of its segments. Indeed, *all* of the polluting equipment regulated in the downstream segment is also regulated in the upstream one. And the control measures for that equipment are alike in all segments. A160. Like gas composition, this distinction is irrelevant to whether and how to control methane emissions from oil and gas sources.

Indeed, EPA has listed source categories far broader, and with far more operational differences, than the oil and gas source category as

defined in 2016. The category referenced above for industrial-commercial-institutional steam generating units includes "any device or system which combusts fuel which results in the production of steam" *regardless of the industry in which those steam generators are located*. 51 Fed. Reg. 42,794, 42,794 (Nov. 25, 1986). The fact that one such unit may be located in a steel plant, another on a university campus, and a third in a paper mill—all facilities with different "primary operations"—was no obstacle to placing them in the same source category. Likewise, in listing all sources in the synthetic organic chemical manufacturing industry "as a single source category," EPA explained that the category may include "over 600 different processes" and noted that EPA would work on generic standards that "could regulate nearly all emissions by covering four broad areas: Process facilities, storage facilities, leakage, and transport and handline losses." 44 Fed. Reg. at 49,224.

The Administrator's distinction based on gas composition and purposes of operations are "more disingenuous than dispositive; [they] evidence[] a complete failure to reasonably reflect upon the information contained in the record." *Fred Meyer Stores, Inc. v. NLRB*, 865 F.3d 630, 638 (D.C. Cir. 2017). The oil and gas source category, as conceived in

2016, is well within the statute's broad directive to establish categories of stationary sources that endanger human health and welfare, and the Administrator is wrong to claim it "exceed[ed] the reasonable boundaries of EPA's authority." 85 Fed. Reg. at 57,029. The Administrator's inability to rationally explain why the interconnected upstream and downstream segments of the industry no longer belong in the same source category renders this part of the Rescission Rule arbitrary and capricious.

Communities near downstream sources have been relying on these pollution standards for years. *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009) ("more detailed justification" required when "prior policy has engendered serious reliance interests"); *see Encino Motorcars LLC v. Narvarro*, 136 S. Ct. 2117, 2126 (2016) ("serious reliance interests … must be taken into account"). While the actual numbers are much higher, *infra* p. 32 & n.10, the Administrator recognizes that sources in the downstream segment have annual emissions of 1.35 million metric tons of methane, 14,000 metric tons of VOCs, and 1,143 metric tons of hazardous air pollutants. 85 Fed. Reg. at 57,030 n.35. These emissions are now entirely unregulated under Section 111 simply

because the Administrator claims to have discovered irrelevant distinctions between the segments in an effort to deregulate a major portion of the industry.[4]

Public statements by Administrator Wheeler suggest that the purpose of dividing the source category was to minimize each segment's emissions contribution so that each might not meet the statutory "significant contribution" threshold for regulation. "With the sources split," he stated, "it's not clear whether the level of greenhouse gas emissions will be high enough to trigger the significant attribution [sic] criteria, which are required to set emission standards under the Clean Air Act." A162-64; *see* A137. The Court has seen this tactic before. In *Humane Soc'y of the U.S. v. Zinke*, 865 F.3d 585, 602-03 (D.C. Cir.

[4] The Administrator claims he was legally required to divide the source category. 85 Fed. Reg. at 57,024, 57,027, 57,029. But even if he merely claimed this was an exercise of his discretion, it is even more clearly arbitrary and capricious to rescind extant protections on such a flimsy basis while putting off any replacement protections for later—here, by not considering whether to establish a new source category for downstream sources until some undefined future time. *Air All. Hous. v. EPA*, 906 F.3d 1049, 1067 (D.C. Cir. 2018) ("Without showing that the old policy is unreasonable, for [the agency] to say that no policy is better than the old policy solely because a new policy *might* be put into place in the indefinite future is as silly as it sounds.") (internal quotation omitted).

2017), this Court found that the Interior Secretary's power under the Endangered Species Act is "to designate genuinely discrete population segments; it is not to delist an already-protected species by balkanization." The same principle applies here.

B. The Administrator's claim that methane standards are "redundant" is contrary to the statute and arbitrary and capricious.

The Administrator next reasons that, after truncating the source category, methane standards for upstream sources are "redundant" with VOC standards, asserting that "[methane] requirements … establish no additional health protections, and are, thus, unnecessary." 85 Fed. Reg. at 57,030. He thus rescinds all methane standards and claims that eliminating "redundant" requirements is required by statute, or at least permissible. *Id*. at 57,031. As a matter of statutory authority or discretion, the Administrator is wrong because the standards are not redundant. Once again, the Administrator provides no rational factual or legal basis for rescinding methane standards, and his outcome-driven rationale is transparently arbitrary and capricious.

First, the Administrator's assertion that methane requirements establish no additional health protections fails to account for their

major impact on *existing* source emissions. The Administrator expressly concluded in the Rescission Rule that removing standards for methane would eliminate EPA's obligation—and, indeed, its authority—to regulate methane emissions from existing oil and gas sources. 85 Fed. Reg. at 57,040-41. Because of the structure of section 111, EPA has found that only methane (not VOC) standards trigger the obligation to regulate existing sources.[5]

This is enormously consequential. Existing sources make up the vast majority of the emissions in the source category, yet the Administrator refused to evaluate the impact his decision has on pollution from these sources. 85 Fed. Reg. at 57,061 ("EPA is not required … to consider the impacts [to] existing sources"). EPA's 2016 determination that the oil and gas sector significantly contributed to dangerous methane pollution was entirely based on sources that the Act

[5] EPA states that VOCs are regulated under Section 110, 85 Fed. Reg. at 57,041; *see* 42 U.S.C. § 7410, but that is so only for sources located in (or upwind of) nonattainment areas. Section 111(d)'s existing source provision applies to pollutants that endanger public health and welfare that are not controlled under Section 110 (or the hazardous air pollutant provisions of Section 112, 42 U.S.C. § 7412). Congress adopted Section 111(d) precisely to ensure that there would be "no gaps" in authority to curb dangerous air pollutants from stationary sources. S. Rep. No. 91-1196, at 20 (1970).

considers "existing" sources. 81 Fed. Reg. at 35,838-39, 35,877 (reviewing methane emissions in 2014); *see also* 42 U.S.C. § 7411(b)(1)(A) (requiring the Administrator, in the present tense, to "include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health and welfare"). Accordingly, it is arbitrary of the Administrator to ignore emissions from those sources when he concludes the standards are "redundant."

EPA's 2016 new source standards for VOCs will regulate only a small fraction of the industry, including some 60,000 wells constructed since 2015. By contrast, there are more than 800,000 existing wells, which EPA will be obliged to regulate if the agency retains new source standards for methane. Collectively, these existing sources emit 10 million tons of methane, 2.3 million tons of VOCs and nearly 90,000 tons of hazardous air pollutants each year. A90 (Table 6); *see* A147.

Accordingly, methane standards *do* ensure additional health protections—ones that are far more extensive than safeguards for VOCs. *See Gen. Chem. Corp. v. United States*, 817 F.2d 844, 846 (D.C.

Cir. 1987) (agency decision that was "internally inconsistent and inadequately explained … was arbitrary and capricious").

The Administrator attempts to dismiss this huge real-world ramification as "simply a legal consequence" of his decision to repeal new source methane standards that is "outside the scope of this action." 85 Fed. Reg. at 57,033, 57,061. "Such an unadorned explanation does not suffice." *Orangeburg, S.C. v. FERC*, 862 F.3d 1071, 1087 (D.C. Cir. 2017). Far from being beyond the scope of this action, these emissions are a "critical issue in this case" and "a matter of importance under the statute." *Gresham v. Azar*, 950 F.3d 93, 102-104 (D.C. Cir. 2020). The Administrator's "[f]ailure to consider" them when the primary purpose of section 111 of the Clean Air Act is to prevent and reduce air pollution, including from existing sources, is "arbitrary and capricious." *Id.*

Even considering only new sources, the Administrator's conclusion that the standards are redundant depends entirely upon his unlawful division of the source category. *Supra* pp. 8-17. As EPA explained in 2016, "direct regulation of [methane] enables the reduction of additional methane emissions beyond what could be achieved by prior VOC-

focused rules." A170; *see* 85 Fed. Reg. at 57,050 (the Administrator agreeing with this statement). Given EPA's focus on VOCs in 2012 the agency set only limited standards for downstream sources. 81 Fed. Reg. at 35,841; *see* 77 Fed. Reg. at 49,522. But considering both methane and VOCs in 2016, the agency adopted more extensive control requirements for downstream sources, concluding that doing so was cost-effective based on methane reductions alone. 81 Fed. Reg. at 35,841. Thus, compared to the 2012 standard, the 2016 standards curbed additional emissions of methane, VOCs, and hazardous air pollutants from downstream sources.

The Rescission Rule quantifies the additional pollution reductions from new sources that will be achieved by regulating methane and VOCs across the entire supply chain, rather than just VOCs from upstream sources. Table 1 of the Rule estimates that reverting to VOC-only standards for the truncated source category will result in 400,000 more short tons[6] of methane, 11,000 more short tons of VOCs, and 330 more short tons of hazardous air pollutants over the next decade as compared to the 2016 standards. 85 Fed. Reg. at 57,020. As explained

[6] One short ton is equivalent to 0.91 metric tons.

infra p. 32 n.10, the estimates based on the best available science are even higher. The Administrator also admits that "forgone VOC emission reductions may also degrade air quality and adversely affect health and welfare effects associated with exposure to ozone, particulate matter … and [hazardous air pollutants]." 85 Fed. Reg. at 57,020.

Despite acknowledging these emission differences and health consequences, the Administrator persists in claiming that revoking the new source methane standards sacrifices "no additional health protections." *Id.* at 57,030. The Rescission Rule thus carefully qualifies the redundancy claim, limiting it only to upstream sources: "Considering *only* the production and processing segments, … the methane [new source standard] was redundant." *Id.* at 57,031 (emphasis added), & n.39 (cabining conclusion that VOC-only standards are cost-effective to the upstream segments). Only by arbitrarily stripping away downstream sources from the regulated source category can the Administrator posit that methane regulations provide no additional health benefits at new sources. His rescission of methane standards was thus arbitrary.

Even if the Administrator were concerned about reducing "redundant" burdens on oil and gas facility owners, he fails to identify a single way in which the alleged redundancy of VOC and methane standards has been problematic or burdensome to the regulated industry. 85 Fed. Reg. at 57,051-52.

And even if it were rational to revoke one of the standards based on redundancy, the Administrator fails to justify eliminating standards for methane rather than VOCs. The Administrator arbitrarily explains that EPA chose to rescind methane standards because "EPA regulated VOC first." 85 Fed. Reg. at 57,033.[7]

Primogeniture, however, is simply not a reasoned basis to choose between these standards. This is particularly true here, where methane—not VOCs—is the predominant pollutant throughout the entire supply chain and where rescinding methane standards will result in vastly greater emissions than rescinding VOC standards. The

[7] The Administrator also claims that with respect to a single equipment standard—for storage vessels—there are only VOC standards such that "redundancy is not uniform." 85 Fed. Reg. at 57,033. But he does not explain why he could not have retained methane standards *and* kept that single VOC standard on the books on the basis that it is not redundant.

Administrator's failure to even consider the impact on existing sources ignores this important aspect of the problem. *Gresham*, 950 F.3d at 102-04. His rejection of the "obvious alternative" of retaining methane standards instead is arbitrary and capricious. *Yakima Valley Cablevision, Inc. v. FCC,* 794 F.2d 737, 746 n.36 (D.C. Cir. 1986).

The Administrator speculates that there may be "limited impact[s]" from leaving existing sources unregulated because some portion of the existing source emissions *may* be abated over some undefined period by voluntary industry programs, regulation by some states, or the replacement of old equipment with equipment subject to the VOC standard. 85 Fed. Reg. at 57,041-43. The Rescission Rule offers "no evidentiary basis or rational supporting account" for such speculation. *USPS v. Postal Reg. Comm'n*, 886 F.3d 1261, 1271 (D.C. Cir. 2018); *e.g.*, 85 Fed. Reg. at 57,041 ("EPA did not prepare and include a quantitative analysis"); *Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 433-34 (D.C. Cir. 2018) ("[s]imply hoping" dangers will be addressed "does not sensibly address those dangers"). Nor does it offer any rational response to comments demonstrating that voluntary measures, state standards, and source turnover will *not* deliver

comparable abatement of existing source emissions. The agency says only that these measures are "factors (albeit difficult to quantify with any certainty)." 85 Fed. Reg. 57,064-65.

The Administrator's "head-in-the-sand approach," *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 930-31 (D.C. Cir. 2017), is a far cry from the actions of an agency faithfully executing its statutory duties to protect the public's health and welfare. His rescission of methane standards is thus arbitrary, capricious, and unlawful.

C. The Administrator's alternative basis for removing methane standards is likewise unlawful.

The Rescission Rule also claims that EPA's 2016 determination that methane emissions significantly contribute to the endangerment of public health and welfare was flawed because it was made "on the basis of methane emissions from the production, processing, and transmission and storage segments, instead of just the production and processing segments." 85 Fed. Reg. at 57,038.[8] This justification fails first because,

[8] The Court need not decide whether, as the Administrator now asserts, the Act requires a pollutant-specific significant contribution finding because EPA made that very finding for methane in the 2016 Rule. 81 Fed. Reg. at 35,877. The Administrator's statutory interpretation is nonetheless wrong. The plain language of Section 111(b)(1)(A) requires

as explained *supra* pp. 8-17, the Administrator lacks a rational basis for removing downstream sources from the regulated source category. Lacking a valid basis to truncate the source category, the Administrator also has no legitimate basis for requiring a new significant contribution finding for methane from the production and processing segments alone.

The Administrator further claims that the significant contribution finding made in 2016 was flawed and must be withdrawn because the agency had not established a "standard or an established set of criteria, or perhaps both" for assessing significance—standards or criteria that he "intends" to "eventually adopt" at some unspecified time in the future. 85 Fed. Reg. at 57,039-40.

An agency cannot reverse a decision because it intends to decide *later* on a new set of criteria for that decision. The agency must provide a rational basis for rescinding the extant protections *now*, not just leave an IOU. *Fox Television Stations*, 556 U.S. at 515; *Air All. Hous.*, 906 F.3d at 1067. The Administrator's reasoning is "administrative keep-

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a significant contribution finding only with respect to the category of sources as a whole, not with respect to individual pollutants.

away" at its worst, *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 420 (D.C. Cir. 2004)—concluding that a prior decision is flawed because it failed to conform to criteria the agency has never before applied in making dozens of significant contribution findings and that the Administrator now refuses to set, much less apply.

Moreover, Section 111(b) does not require EPA to set specific standards or criteria in advance of making "significant contribution" determinations. *See United States v. Calamaro*, 354 U.S. 351, 358-59 (1957) (rejecting agency's "attempted addition to the statute of something which is not there"). Rather, the Act permits EPA to make significant contribution determinations suited to the characteristics of different pollutants and source categories in individual rulemakings. This Court rejected a similar claim that EPA must enunciate precise criteria before determining that an air pollutant endangers public health and welfare. *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 122-23 (D.C. Cir. 2012) ("EPA need not establish a minimum threshold of risk or harm before determining whether an air pollutant endangers;" "the inquiry necessarily entails a case-by-case, sliding-scale approach."); *see also New York v. EPA*, 964 F.3d 1214, 1217 (D.C. Cir.

2020) (rejecting the "convoluted and seemingly unworkable showing [EPA] demanded" before regulating). The same reasoning applies here.[9]

EPA found in 2016 that the oil and gas industry is the largest industrial emitter of methane in the United States, and that United States oil and gas sector emissions are larger than the total climate pollution of approximately 150 countries, and more than the combined emissions of 54 countries. 81 Fed. Reg. at 35,839-40. The enormous methane emissions from the oil and gas industry are significant by any metric.

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The Administrator's utter lack of any rational basis or factual support for reversing EPA's prior rules demonstrates Petitioners' likelihood of success on the merits. Indeed, the flaws are so clear as to justify summary vacatur.

[9] The Administrator's argument is all the more remarkable because it calls into question the validity of over *five dozen* source category listings EPA has made since the early 1970s. If the Administrator were correct, all such listings, along with standards issued for those source categories, would be legally invalid. Close to half-a-century of consistent agency practice in implementing the significant contribution finding on a fact-specific basis rule-by-rule carries significant weight.

II. Petitioners Satisfy the Other Requirements for a Stay.

A. Petitioners and their members are irreparably harmed by the Rescission Rule.

The Rescission Rule takes effect immediately and will cause immediate and irreparable harm to Petitioners' members. As of yesterday, the Rule relieves the operators of over a thousand sources covered by the prior rules of their obligations to install and operate emission control equipment and to regularly monitor for and repair leaks. They will also be exempt from the annual reporting requirement, the deadline for which is October 31, 2020—even for measures they were required to undertake while the prior rules were in effect. These immediate changes directly increase methane, VOC, and hazardous air pollutant emissions adversely affecting Petitioners' members and similarly situated people.

Methane is more than 80 times more powerful over a 20-year timeframe than carbon dioxide and is responsible for a quarter of the warming we have experienced to date. A175 (¶4). Immediate reductions in methane emissions are "particularly" important in combatting climate change. A243; *see* A177-78 (¶7). The climate impacts of methane pollution include increased likelihood of extreme weather events,

including drought and floods, rising sea levels, and the loss of native plant and animal species, A177-80 (¶¶7-9), all of which harm Petitioners' members.

Ozone-forming VOC and hazardous air pollution from unregulated sources threatens the health of Petitioners' members and the public. Ozone exposure impairs lung functioning and leads to missed school- and work-days, hospital and emergency room visits, and serious cardiovascular and pulmonary problems, such as stroke, heart attacks, and death. A196-203 (¶¶3-15). Children, the elderly, low-income communities, and people with pre-existing conditions are particularly vulnerable to ozone. A198 (¶6). Likewise, exposure to hazardous air pollutants, such as benzene and formaldehyde, can cause cancer and neurological damage. A207-08 (¶¶19-21).

"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." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987); *Beame v. Friends of Earth*, 434 U.S. 1310, 1314 (1977) (recognizing "irreparable injury that air pollution may cause"). "[O]nce such pollutants are emitted, they cannot be removed." *California v.*

BLM, 286 F. Supp. 3d 1054, 1073-74 (N.D. Cal. 2018) (finding irreparable harm from suspension of oil and gas rule that will result in "emissions of 175,000 additional tons of methane, 250,000 additional tons of volatile organic compounds, and 1,860 additional tons of hazardous air pollutants"). The harm is quite literally "beyond remediation." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016).

The excess emissions that will result from the Rescission Rule are "certain and great, actual and not theoretical, and so imminent" as to necessitate immediate relief. *Id.* at 9 (internal quotation marks and alterations omitted).

1. Petitioners are irreparably harmed by the removal of pollution standards for downstream sources.

Downstream sources have been regulated under Section 111 since 2012 and have been subject to the current standards since 2016. As of yesterday, and absent a stay, these sources no longer have to detect and repair leaks or meet any other pollution reduction requirements under Section 111.

Considering only the effects of eliminating the standards for new downstream sources, the Rescission Rule will likely increase emissions

at over one thousand downstream sources by more than 290,000 metric tons of methane, 8,000 metric tons of VOCs, and 230 metric tons of hazardous air pollutants in 2021, during the time this case would be litigated on the merits. A71 (Table 2).[10] The additional methane emitted by deregulated downstream sources in 2021 alone is expected to have the near-term climate impact of over 5 million passenger vehicles driving for one year or over 25 billion pounds of coal burned. A183-84 (¶14). These emissions harm Petitioners' members like Environmental Defense Fund member Francis Don Schreiber who is already experiencing the negative impacts of climate change on his ranch in Rio Arriba County, New Mexico. A488 (¶14).

Moreover, these downstream facilities exist throughout the nation, often in close proximity to homes and communities. A78-79

[10] These estimates are based on aggregate growth in gas production and the latest peer-reviewed studies that show extensive pollution from "super-emitting" sources. A68-69 (¶¶11-12). But even based upon EPA's own estimates, which do not account for super-emitters and are based on other unsupported assumptions, A73-78 (¶¶15-19), Petitioners' members are irreparably harmed. EPA estimates that rescinding downstream source standards will increase emissions at over one thousand downstream sources by 22,000 short tons of methane, 610 short tons of VOCs, and 18 short tons of hazardous air pollutants in 2021 alone. A278 (Table 2-4).

(¶20). Over 180,000 people live within three miles of a now unregulated downstream facility. *Id.* Many of Petitioners' members live in close proximity to affected sites. For example, Sierra Club member Alan Levin lives less than three miles from a now unregulated modified transmission compressor station in Rockland County, New York, and is concerned that additional pollution resulting from the Rescission Rule will exacerbate air quality issues in Rockland, which already suffers from unlawful levels of ozone. A418-19, A421 (¶¶6-8, 14). Petitioner Environmental Defense Fund has over 2,600 members who live within 10 miles of a regulated downstream facility—including 1,900 members who live in areas not in attainment with the 2015 ozone standards, where the additional pollution allowed by the Rescission will worsen unhealthy air quality and threaten their health. A429-30 (¶18).

2. Petitioners are irreparably harmed by the removal of methane standards and existing source authority.

Rescission of methane standards for new sources means that EPA has decided to terminate its duty to regulate the industry's many hundreds of thousands of existing sources. But for the Recission Rule, EPA would still be statutorily obligated to address existing sources—

and, indeed, existing source regulations would be in place today.[11] Recognizing its mandatory duty to regulate existing sources, EPA initiated a process in 2016 to do so "swiftly." *Supra* p. 5. Indeed, the agency has stated that the *sole* reason it halted the process to regulate existing sources is because it intended to review, and likely rescind methane standards. A480 (EPA "does not now, and will not in the future, argue that" it is not regulating existing sources because there "are higher or competing priorities"); *see* A158. If this Court imposes a stay pending review, EPA will continue to be subject to a mandatory duty to promulgate existing source regulations under section 111(d), with no excuse for continued delay.[12]

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[11] EPA currently estimates that the full process to issue existing source emission guidelines would take between 27.5 and 44.5 months. A432-37. Even accepting EPA's lengthy schedule, had the agency not suspended the process initiated in June 2016, it would have issued regulations approximately six months ago at the latest. *Compare* A451 (¶38 of Plaintiffs' Statement of Undisputed Facts in case brought to enforce EPA's duty to regulate existing sources) *with* A470-476 (EPA's response failing to dispute this fact).

[12] Summary judgment briefing was half complete in the lawsuit seeking a district court order requiring EPA to promulgate existing source regulations by a date certain when EPA signed the Rescission Rule. *New York v. EPA*, No. 18-0773-RBW (D.D.C.). If the Rescission Rule is vacated or stayed, EPA will no longer have any defense for its ongoing failure to issue such regulations. Absent a stay, EPA has indicated that it will seek to dismiss the lawsuit as moot.

Every day that the Rescission Rule is in effect is an additional day without the development of standards to control that pollution and another day of emissions that cannot be removed from the air, and whose harmful consequences follow inexorably and immediately from their release. If regulation is delayed another year pending this litigation, that will lead to excess emissions of 3 million metric tons of methane, 850,000 metric tons of VOCs, and 32,000 metric tons of hazardous air pollutants that could otherwise be prevented. A92-93 (¶35).

These excess emissions will dramatically impact Petitioners' members and others in communities living with pollution from older oil and gas facilities. More than 9 million people living within a half-mile of an active, existing well are exposed to toxic air pollution from these sites, including 2.7 million people of color and 1.4 million people living below the poverty line. A96 (¶41); A207-15 (¶¶19-33); *see also* A428 (¶15) (EDF has 4,500 members living within half a mile of an active, existing well and more than 50,000 members living within 10 miles of such a well). Over 100,000 existing wells are located in counties that currently do not attain health-based standards for ozone. A94 (¶38); *see*

also A428-29 (¶16) (EDF has 71,000 members living in ozone nonattainment areas that contain at least one active, existing well).

These emissions will be felt acutely by Petitioners' members like Ft. Berthold POWER members Walter and Lisa DeVille, enrolled members of the Mandan, Hidatsa, Arikara Nation. The DeVilles live on the Ft. Berthold Reservation in North Dakota surrounded by thousands of existing wells, and have been sickened by a respiratory illness common among oil and gas workers known as the "Bakken cough." A493-95 (¶¶2, 5, 8). Mr. Schreiber has had open heart surgery for congestive heart failure, and he is "constantly concerned about the impact of the air quality on my heart condition." A486-87 (¶12). Clean Air Council member Bryan Latkanich and his young son, who live in southwestern Pennsylvania near a cluster of active, existing wells, have both recently developed asthma, and Mr. Latkanich worries that his son, "like many other children in southwest Pennsylvania, will develop cancer from exposure to toxic cancer-causing air pollutants." A502-05 (¶¶17, 22-23).

The fact that existing source regulations have not already been developed "does not negate the imminence of [the] harms;" rather, it

"suggests that the harms to [Petitioners] from waste of natural gas and pollution would be even greater than estimated the longer" standards are delayed. *California*, 286 F. Supp. 3d at 1075. "All the while, the wasted gas and emissions will continue to increase, leading to further irreparable harm." *Id*; *see also Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1307-08 (1976) (Rehnquist, J., in chambers) (finding "irreparable harm" where lower court stay of motor vehicle safety standards would delay "for a year or more" the "[e]ffective implementation" of a congressionally mandated program to "reduce traffic accidents and deaths and injuries").

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Every day that the Rescission Rule is effective, Petitioners' members are harmed by the excess harmful pollution the Rule allows, and these harms cannot be remediated. The irreparable harm factor weighs heavily in favor of a stay pending review.

B. The public interest and balance of equities favor a stay.

"In exercising their sound discretion, courts of equity should pay particular regard for the public consequences" when issuing an injunction. *Winter*, 555 U.S. at 24. As explained *supra* p. 32, the

Rescission Rule will immediately result in significant additional emissions of methane, VOCs, and hazardous air pollutants from new sources in the downstream segment of the industry. And it will preclude urgently needed and long overdue standards for the many hundreds of thousands of existing sources. Particularly for communities that live in close proximity to these sources, the health benefits of controlling those emissions are substantial. *See supra* p. 30.

By contrast, oil and gas companies "will not be substantially harmed by a stay." *Humane Soc'y of U.S. v. Cavel Int'l, Inc.*, No. 07-5120, 2007 WL 4723381, at *1 (D.C. Cir. May 1, 2007). EPA has been regulating sources in the downstream segments of the industry for eight years, and a stay would merely keep that status quo in place. The Rescission Rule does not include any evidence of undue burden or hardship to the agency from administering, nor to oil and gas companies from complying with, these regulations. *See* 85 Fed. Reg. at 57,064 (estimating that the Rescission Rule would "partially reduce" the "small impacts on crude oil and natural gas markets of the 2016 Rule"); A509 ("The EPA did not propose to remove the transmission and storage segment from the source category due to any practical problems

with the implementation of a comprehensive rule."). The Regulatory Impact Analysis accompanying the Rescission Rule calculates avoided compliance costs to industry of just over $4 million a year. 85 Fed. Reg. at 57,020. These compliance costs represent a tiny fraction (0.14%) of revenues for regulated operators in the downstream segment, A252-53 (¶18), of an industry producing hundreds of billions of dollars in oil and gas each year.

Indeed, many oil and gas companies, ranging from independent domestic companies like Jonah Energy and Pioneer Natural Resources to the largest operators like ExxonMobil and Shell, have opposed these rollbacks, and urged EPA to regulate methane from both new and existing sources. A512-54; *see* A256-27 (¶¶25-27). On the day the Rescission Rule was signed, BP America's chairman said: "BP believes methane should be directly regulated by the EPA and opposes today's decision by the Administration. The direct federal regulation of methane emissions is a critical step to protecting the environment and keeping the gas in our pipes in order to provide it to the market." A551-54. Even those companies that have supported the Rescission Rule

admit in private that methane emissions from the industry are a significant problem. A557-559.

Finally, Petitioners' "extremely high likelihood of success on the merits is a strong indicator that a preliminary injunction would serve the public interest. There is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters*, 838 F.3d at 12.

CONCLUSION

The Rescission Rule is unlawful, will irreparably harm Petitioners, and is contrary to the public interest. This Court should stay the Rule pending review or summarily vacate it. Because the Rule took effect yesterday, Petitioners request a decision as soon as possible.

DATED: Sept. 15, 2020

Respectfully submitted,

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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 7,749 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2020, I served the foregoing Motion for a Stay or, in the Alternative, Summary Vacatur, on all parties through the Court's electronic filing (ECF) system and by email.

DATED: September 15, 2020

/s/ *Susannah L. Weaver*
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