

Nos. 24A213, 24A215

In the Supreme Court of the United States

No. 24A213

STATE OF OKLAHOMA, *et al.*,
Applicants,

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

No. 24A215

CONTINENTAL RESOURCES, INC., *et al.*,
Applicants,

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

**ENVIRONMENTAL & HEALTH RESPONDENTS' RESPONSE IN
OPPOSITION TO APPLICATIONS FOR STAY**

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RULE 29.6 DISCLOSURE STATEMENT

Respondents Center for Biological Diversity, Clean Air Council, Dakota Resource Council, Environmental Defense Fund, Fort Berthold Protectors of Water & Earth Rights, Earthworks, Environmental Law & Policy Center, Food & Water Watch, GreenLatinos, Natural Resources Defense Council, Sierra Club are nonprofit environmental and public health organizations. None of them has any parent corporation or any publicly held company that owns 10% or more of its stock.

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INTRODUCTION AND SUMMARY OF ARGUMENT

The environmental and public health respondents respectfully submit this response in opposition to the applications to stay the Environmental Protection Agency’s (“EPA’s”) rule under Section 111 of the Clean Air Act requiring reductions in methane emissions from oil and gas facilities, 89 Fed. Reg. 16,820 (Mar. 8, 2024) (“Rule”). EPA’s authority and obligation to act is clear: the Clean Air Act mandates the control of dangerous pollution, and recently Congress has twice—in no uncertain terms—specifically directed EPA to limit oil and gas sector methane pollution under Section 111. The Rule is founded upon a large and robust technical record compiled over years, and it reflects conventional, technology-based performance and work practice standards that will reduce pollution directly from affected oil and gas sources. It builds on similar approaches that EPA, states, and companies have used for years.

The applications falter at the threshold. Applicants waited to apply to this Court more than six weeks after a D.C. Circuit panel unanimously denied their stay motions. *See* Order, ECF No. 2063659 (July 9, 2024) (Katsas, Rao, and Childs, JJ). Rather than seek expedited consideration in that court, both the state and industry applicants supported a protracted merits briefing schedule extending well into 2025, which further calls into question the urgency of their complaints. Contrary to this Court’s requirement that stay applicants first present their requests to the “appropriate court or courts below,” Sup. Ct. Rule 23.3, industry applicants advance novel arguments here on four issues—challenges to the super emitter provisions, standards for associated gas, monitoring for net heating value at control devices,

and permit limitations for storage vessels—that were not included in any D.C. Circuit stay motion. To consider newly presented claims in these circumstances would undermine the normal sequence of emergency-relief litigation, inviting parties to strategically withhold claims from the lower courts or spin out new arguments for first-instance consideration here.

Applicants’ submissions come nowhere near to justifying the requirements for a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Their claims are unlikely to succeed on the merits. State applicants’ challenges to the Rule’s presumptive standards for state plans covering existing oil and gas facilities seek to upend the statute’s cooperative federalism structure, which assigns EPA the “primary regulatory role.” *West Virginia v. EPA*, 597 U.S. 697, 710 (2022). Their challenge to EPA’s decision extending the default deadline for state plan submissions to two years instead of their preferred three fails to show an unreasonable exercise of agency discretion that would justify the extraordinary relief they seek.

Industry applicants ask this Court to enjoin the Rule based on highly technical objections to a narrow set of requirements for new sources—most, again, not even presented in the stay motions below. Applicants mischaracterize the Rule and ignore EPA’s extensive administrative record and analysis, which thoroughly explains the technical basis for each of the provisions at issue. EPA’s judgments on these quintessentially technical matters falling squarely within its expertise raise no questions that merit emergency adjudication.

The other stay factors also counsel against relief. Applicants' claimed harms are speculative, unlikely to materialize during the D.C. Circuit's review, and undercut by their own litigation conduct. In fact, most industry applicants do not even attempt to show irreparable harm. In contrast, a stay would harm respondents, their members, and the public at large by allowing the emissions of millions of additional tons of harmful pollution. Congress itself has twice in recent years confirmed the urgent public interest in timely implementation of Section 111 methane limits for oil and gas facilities, the country's largest industrial emitter of that climate-damaging pollutant. The applications should be denied.

REASONS TO DENY THE STAY APPLICATIONS

I. APPLICANTS ARE NOT LIKELY TO SUCCEED ON THE MERITS

Applicants' arguments against the Rule are unlikely to succeed on their merits. EPA has faithfully adhered to the framework laid out by Congress in Section 111 and by this Court in *West Virginia v. EPA*, 597 U.S. 697 (2022). The Rule reflects achievable, cost-effective, technology-based standards that apply directly to sources and build on EPA's extensive scientific and technical expertise. For sources where it is feasible to quantify emission reductions, EPA has chosen standards of performance containing quantitative limitations (such as the requirement for a 95 percent reduction in methane emissions from storage vessels). *See* 89 Fed. Reg. at 16,830; 42 U.S.C. § 7411(a)(1). Where emissions are difficult or impossible to measure, EPA established reasonable work practice standards (such as the requirements to regularly check equipment for methane leaks). *See* 89 Fed. Reg. at 16,830; 42 U.S.C. § 7411(h). These approaches are consistent with those

EPA has adopted in prior standards to reduce pollution from the oil and gas sector, with state-level standards, and with actions companies have taken to reduce their pollution. *See* 89 Fed. Reg. at 16,823. After establishing new source standards under Section 111(b), EPA issued emissions guidelines for existing sources as required under Section 111(d). 42 U.S.C. § 7411(d). Applicants’ attacks on the Rule—many not properly raised at this stage—are unlikely to succeed on the merits.¹

A. State Applicants Have Not Shown a Likelihood of Success on Their Challenges to the Rule’s Emission Guidelines for Existing Sources.

1. EPA may set emission guidelines containing presumptively approvable standards.

State applicants insist that EPA exceeded its authority “by purporting to impose ‘presumptive standards’” in its emission guidelines, which “a State must then (somehow) rebut to EPA’s satisfaction before the State may establish its own standards of performance.” State Appl. 16-17. State applicants also complain that EPA established “extra-statutory factors and requirements that States must meet if their plan deviates from EPA’s presumptive standards.” *Id.* at 11.

¹ As discussed above, industry applicants violated this Court’s Rule 23.3 by advancing new arguments here that were not included in any D.C. Circuit stay motion, including arguments concerning the Super Emitter Program, standards for associated gas, monitoring for net heating value in control devices, and permit limitations for storage vessels. *See* Industry Pet’rs’ Mot. Stay 3, ECF No. 2055134 (May 17, 2024) (mentioning associated gas standards in background but not argument; not raising Super Emitter Program, monitoring for net heating value, or permit limitations for storage vessels); State Pet’rs’ Mot. Stay 5, 8, ECF No. 2049412 (mentioning Super Emitter Program in one sentence in background and another in generic arguments against the presumptive standards but offering no argument). None of these passing mentions sufficed to raise or preserve arguments. While applicant Continental Resources touched on some of these issues in its *response* to the states’ stay application, *see* Intervenor-Pet’r Continental Resources, Inc.’s Resp. Supp. Mot. Stay, ECF No. 2053097, that responsive stance is insufficient to raise or preserve the issues. *See Am. Fuel & Petrochemical Mfrs. V. EPA*, 937 F.3d 559, 590 (D.C. Cir. 2019). Nor do applicants present any “most extraordinary circumstance[],” Sup. Ct. Rule 23.3, that might justify presenting claims or arguments for the first time in an emergency application to this Court.

These arguments are meritless. “Presumptive standards” simply indicate the stringency of emission limits that EPA considers approvable in state plans. 89 Fed. Reg. at 16,829. As this Court stated in *West Virginia*, “[t]he Agency, not the States, decides the amount of pollution reduction that must ultimately be achieved . . . The States then submit plans containing the emission restrictions they intend to adopt and enforce in order not to exceed the permissible level of pollution established by EPA.” 597 U.S. at 710. The statute then directs EPA to determine whether states’ plans are “satisfactory.” 42 U.S.C. § 7411(d)(2)(A); *see also Am. Elec. Power v. Connecticut*, 564 U.S. 410, 424 (2011) (“For existing sources, EPA issues emissions guidelines; in compliance with those guidelines and subject to federal oversight, the States then issue performance standards for stationary sources within their jurisdiction” (cleaned up)). Congress has frequently employed, and this Court has upheld, this cooperative federalism regulatory structure. *See, e.g., Hodel v. Va. Surface Min. & Reclamation Ass’n, Inc.*, 452 U.S. 264, 289 (1981).

Including presumptive standards in EPA’s emission guidelines is not a recent innovation. As EPA explained in its 1975 regulations to implement Section 111(d), adopted soon after the statute’s enactment, “it is desirable (if not legally required) that the criteria [for determining whether state plans are satisfactory] be made known in advance to the States, to industry, and to the general public.” 40 Fed. Reg. 53,340, 53,343 (Nov. 17, 1975). EPA’s emission guidelines provide exactly this advance notice of the criteria for satisfactory plans. While the Rule allows several pathways for determining “equivalent” standards, *see, e.g.*, 89 Fed. Reg. at 16,996,

(none of which applicants seriously challenge), and separately allows for variances imposing less stringent standards upon certain demonstrations, *id.* at 16,925, its “presumptive standards” simply signal that the Agency will likely approve a state plan containing those standards as satisfactory without further inquiry. This is how EPA has administered the program for nearly 50 years.

Congress has repeatedly approved EPA’s longstanding regulatory practice: emission guidelines setting forth presumptively approvable standards, coupled with variances available for exceptional sources. Congress amended Section 111(d) in 1977 to add a provision authorizing the variance mechanism that EPA included in the 1975 regulations, but otherwise left those regulations unchanged. Aware of EPA’s regulatory design, the House Committee Report explained that “the Administrator would establish *guidelines* as to what the best system for each such category of existing sources is.” H.R. Rep. No. 294, 95th Cong., 1st Sess. 195 (1977) (emphasis added). In 1990, Congress added Clean Air Act Section 129 providing that regulations for emissions from solid waste incinerators “shall include . . . *guidelines (under Section [111](d) of this title and this section) and other requirements applicable to existing units.*” 42 U.S.C. § 7429(a)(1)(A) (emphasis added). And, in 2021 and 2022 legislative actions specific to oil and gas methane emissions, described below, *see infra* pp. 32-35, Congress once again expressed its approval of EPA’s regulatory approach, including the incorporation of presumptive standards in emission guidelines.

State applicants concede key points that undermine their complaint about presumptive standards. They acknowledge that (1) “Section 111(d) provides EPA with the authority to determine the best system of emission reduction and the degree of emission limitation achievable”; (2) EPA “sets an emission-reduction amount”; and (3) states establish standards of performance “to meet the emission guidelines set by EPA.” State Appl. 15-16. This is an apt description of the presumptive standards that state applicants decry. Their argument simply collapses upon itself.

State applicants wrongly assert that EPA has imposed “extra-statutory” factors that constrain their freedom to adopt equivalent or even weaker standards without federal oversight. *Id.* at 11. They fixate first on EPA’s explanation that it will “thorough[ly] review[]” state plans that depart from the presumptive standards, *id.* at 12, 19, 26, as if doing that were unlawful. When Congress directed EPA to determine whether state plans are “satisfactory,” however, it plainly intended a substantive review. That review *should* be thorough.

State applicants further complain that the Rule does not allow a state to demonstrate by a “total program evaluation” that a plan that departs from EPA’s presumed standards will produce equivalent overall emission reductions. *Id.* at 11-12. EPA explained, however, why overall emissions equivalency is very difficult to demonstrate in programs containing a mix of performance standards (for sources where emissions quantification is feasible) and equipment and work practice standards (when measuring source emissions is not feasible). EPA reasonably

determined that “an accurate qualitative comparison on a total-program scale would be extremely complicated” and that “[c]ommenters did not provide the EPA with actionable ideas to address [this] concern.” 89 Fed. Reg. at 16,998. The Rule *allows* states to show equivalence—in some cases even “qualitative” equivalence—on a more targeted basis (*e.g.*, alternative controls for fugitive emissions from components at well sites and compressor stations). *Id.* at 16,998-99. Applicants take no issue with these more targeted equivalency provisions.

State applicants also object to any constraints on their ability to set *weaker* standards for individual sources or classes of sources. But the statute itself limits the circumstances permitting variances. Section 111(d)(1) requires states to “establish” standards of performance—a term defined for purposes of Section 111 as reflecting the degree of emission limitation set by the EPA Administrator, 42 U.S.C. § 7411(a)(1)—for categories of existing sources at the level set forth in EPA’s emission guidelines. At the same time, it also allows states to set a less stringent limit when “applying” standards to a particular source or class of sources, “tak[ing] into consideration, among other factors, the [source’s] remaining useful life.” 42 U.S.C. § 7411(d)(1). EPA’s long-standing regulations detail the factors that would warrant a variance, such as unreasonable compliance costs based on facility age, the physical impossibility of installing pollution controls, or other factors specific to the facility or facilities. 89 Fed. Reg. at 17,002-05; 40 C.F.R. §§ 60.24(f), 60.24a(e). EPA reviews a state’s standards and variances when determining if a plan is satisfactory. 40 C.F.R. §§ 60.27(b), 60.27a(b).

State applicants identify no legal defects in these criteria, simply claiming they are “extra-statutory.” State Appl. 11. They ignore that EPA has administered Section 111(d) in this manner for nearly 50 years. In fact, most of the state applicants *themselves* argued in litigation just a few years ago that the Agency’s regulatory approach to variances “simply repeats the statutory language and then provides examples of ‘other factors’ States may consider.” State Intervenors’ Br. 27, *Am. Lung Ass’n v. EPA*, No. 19-1140 (D.C. Cir. July 16, 2020), ECF No. 1852108.

State applicants further object that the Rule requires a state to demonstrate that a source exhibits “fundamental differences” from typical sources in the same category or subcategory to be eligible for a variance. State Appl. 11. But they provide no reason why this condition conflicts with the statute. Instead of requiring case-by-case determinations for potentially thousands of sources, Congress directed EPA and the states to set standards for categories and subcategories of similar sources, while allowing variances for truly exceptional ones. A category or subcategory consists of sources that, while not identical, are similar enough to be regulated the same way. If a state could issue variances based on only minor differences rather than fundamental ones, then state exceptions could swallow the federal rule, undercutting EPA’s obligation to determine “the permissible level of pollution” for a category or subcategory. Contrary to *West Virginia*, 597 U.S. at 710, this would let the states, not EPA, “decide[] the amount of pollution reduction that ultimately must be achieved,” transforming what Congress intended as a “pin-hole safety valve” into “a yawning loophole.” *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011,

1040 (D.C. Cir. 1978) (approving an analogous “fundamental differences” condition for variances under the Clean Water Act).

Lastly, applicants assert that because some of the Rule’s presumptive standards prescribe specific technologies and practices, EPA has “unlawfully ratchet[ed] up” its “scrutiny of state plans.” State Appl. 17. As discussed above, however, Section 111(h) specifically authorizes equipment or work practice standards where standards of performance are not feasible. 42 U.S.C. § 7411(h). State applicants do not challenge EPA’s determination that equipment or work practice standards are appropriate for specific subcategories (such as fugitive emission from valves or other components) because emissions measurement is not feasible. Thus, they have no basis for complaining that the presumptive standards for those subcategories require specific equipment or work practices. And, as already noted, for these subcategories too, the Rule allows states to adopt different approaches that they can show deliver equivalent emission reductions. *See* 89 Fed. Reg. at 16,998-99; *supra* pp. 7-8.

2. *EPA reasonably established a two-year state plan development timeline.*

State applicants ask the Court to stay the Rule on the ground that they should have three years, rather than two, to submit a state plan to EPA. This request comes nowhere near justifying an emergency stay—particularly since several state applicants themselves *supported* a two-year plan development timeline. *See, e.g.*, EPA-HQ-OAR-2021-0317-2330, at 3 (Feb. 13, 2023) (Kentucky

comments calling for a “minimum of 24 months”);² EPA-HQ-OAR-2021-0317-2418, at 2 (Feb. 13, 2023) (South Dakota comments “agree[ing] it is possible to submit a plan to EPA within 18 months”).³

State applicants claim that the two-year deadline does not allow them “sufficient time to develop their own standards of performance” (as opposed to adopting EPA’s presumptive standards) for thousands of separate sources. State Appl. 21. But they ignore the statute’s design: as just described, Congress directed EPA and the states to set standards for categories and subcategories of similar sources, rather than on a source-by-source basis, and to use variances to address exceptional sources. State applicants thus exaggerate the workload they face.⁴

EPA considered the states’ burden when extending the timeline for this Rule from 18 months (the default under Section 111(d)’s implementing regulations, 40 C.F.R. § 60.23a(a)(1)), to two years. EPA explained that two years was warranted to adequately address the number of standards for this source category and the dispersion of sources. 89 Fed. Reg. at 17,009-10. The Agency also considered that while some states would adopt the presumptive standards without change, others would exercise their options, described above, to determine equivalent standards for certain subcategories or to issue variances for exceptional sources. *Id.* And the Agency explained its decision not to set a longer deadline in light of the need for

² Available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2330>.

³ Available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2418>.

⁴ For example, while applicants complain that they will not have enough time to develop emissions inventories before establishing standards of performance, State Appl. 22, EPA explained that such inventories are not required in this timeframe. *See* 89 Fed. Reg. at 17,006.

timely pollution reductions. *See, e.g., id.* at 16,839, 16,844, 17,010. In this way, EPA selected a due date for state plans that accounted for both state and federal administrative considerations and the statute’s “core objectives” of reducing pollution. *Am. Lung Ass’n v. EPA*, 985 F.3d 914, 994 (2021), *overruled in part on other grounds, West Virginia*, 597 U.S. at 734-35. Furthermore, if a state fails to submit an approvable plan within the deadline, it may always submit one later, which will displace any federal plan once EPA approves it. *See* 88 Fed. Reg. 80,480, 80,495 (Nov. 17, 2023).

B. The Rule’s Monitoring Provisions for Large Emissions Events Are Within EPA’s Authority.

Industry applicants challenge the provisions for gathering information on and investigating very large methane leaks, called the “Super Emitter Program.”⁵ Applicants failed to raise these objections in their stay motions below, *see supra* p. 4, n. 1, and, in any event, there are no grounds for an emergency stay of these provisions. The super-emitter provisions are as unremarkable as a program that allows members of the public to call a local government safety hotline if they smell a gas leak in the neighborhood: they address the many instances in which large methane leaks from malfunctioning equipment, which can be dangerous and even catastrophic, have gone undetected for long periods. For example, one large leak in 2018 at a well in Ohio was estimated to have emitted over 60,000 tons of methane,

⁵ EPA defines a super-emitter as a methane leak of at least 100 kilograms (220.5 pounds) per hour. A single leak of that magnitude, if it persisted for a year, would emit enough methane to cover the energy consumption of over 3,000 homes over that time. Calculation utilizing EPA, Greenhouse Gas Equivalencies Calculator, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

89 Fed. Reg. at 16,843, creating a climate impact equivalent to driving more than 350,000 gasoline-powered cars for a year.⁶ Such leaks also release hazardous air pollutants and smog-forming volatile organic compounds. *See infra* pp. 36-37.

The super-emitter provisions merely standardize and streamline the process for using information from new methane monitoring technologies, such as advanced satellites, that can detect and pinpoint the source of large gas leaks. To that end, the provisions allow independent monitoring entities, which are first certified by EPA and must use EPA-approved technologies, to inform the Agency of observed major methane releases. 89 Fed. Reg. at 16,876-81. This type of information is already being collected and published by independent entities,⁷ and industry commenters have acknowledged that “[t]here is nothing under the law that . . . prevents any third party from conducting remote monitoring.”⁸ After verifying the accuracy of received information, EPA notifies the operator. The operator then must investigate, address any issues, and report findings to EPA. 89 Fed. Reg. at 16,879-81; 40 C.F.R. § 60.5371b(d)-(e). The provisions thereby further EPA’s duties by enabling it to collect and consider information about major methane pollution

⁶ Calculation utilizing EPA, Greenhouse Gas Equivalencies Calculator, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

⁷ *See, e.g.*, Methane Alert and Response System (MARS), United Nations Env’t Programme, <https://www.unep.org/topics/energy/methane/international-methane-emissions-observatory/methane-alert-and-response-system> (last accessed Sept. 19, 2024) (publicly identifying more than 120 major emissions events); PermianMAP, Environmental Defense Fund, <https://data.permianmap.org/pages/operators> (last accessed Sept. 19, 2024) (publicly identifying operators’ emissions).

⁸ Comments of Am. Petroleum Inst. at 5, EPA-HQ-OAR-2021-0317-2428 (Feb. 13, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2428>.

releases from vetted sources through a transparent and standardized system. *See* 89 Fed. Reg. at 16,825-26.

As applicants concede, Clean Air Act Section 114(a) gives EPA the authority to require owners or operators of any emissions source to report emissions information to the Agency. *See* 42 U.S.C. § 7414(a); Industry Appl. 16. That statutory authority is the basis for the program’s obligations for operators. *See* 89 Fed. Reg. at 16,877. However, industry applicants contend that the Agency may not receive information of emission sources from third parties rather than owners or operators. Industry Appl. 16. The statute’s plain language says otherwise: EPA is not only permitted to receive information from third parties, but it may “require *any person . . .* who the Administrator believes may have information necessary” for implementing the Clean Air Act to produce such information and reports. 42 U.S.C. § 7414(a)(1) (emphasis added); 89 Fed. Reg. at 16,916 (citing Section 114(a)). EPA may accept voluntarily-provided information that it has the authority to require.

Industry applicants also argue that EPA unlawfully deputizes third parties to “enforce” the Rule, Industry Appl. 15, but the super-emitter provisions do nothing of the kind, 89 Fed. Reg. at 16,917 (clarifying this process “is separate from and unrelated to the EPA’s enforcement functions”). As explained, third parties’ only role is to voluntarily supply information to EPA under limited circumstances defined by the Rule. *See* 40 C.F.R. § 60.5371b(a)-(b) (setting technology and certification requirements for emission notifications). The Agency then reviews and verifies all data before contacting operators, and even EPA’s notification “is not an

allegation of a violation”—it merely triggers an obligation to investigate. EPA, *Response to Public Comments*, at II-14-95, No. EPA-HQ-OAR-2021-0317-4009 (Nov. 2023).⁹ The program thus creates no new enforcement authority, and applicants’ attempts to impugn it fall short.

C. The Challenged Features of the New Source Standards are Reasonable and Well-Supported by the Record.

Industry applicants make highly technical objections to four distinct, narrow, and unrelated provisions of the Rule’s new source standards. Merely listing these claims illustrates how narrowly technical they are, and how poorly suited for first-instance adjudication here in an emergency stay proceeding:

- provisions for capture of associated gas emitted at oil wells, 40 C.F.R. § 60.5377b;
- net heating value monitoring requirements for certain flares and combustion devices, *id.* § 60.5417b(d);
- the option to use legally and practicably enforceable state permit limits to determine whether a storage vessel is an affected facility, *id.* § 60.5365b(e); and
- standards for fugitive emission reductions at certain marginal well sites that reflect the use of optical gas imaging, *id.* § 60.5397b.

The first three of these objections were not properly presented to the D.C. Circuit during stay proceedings, *see supra* p. 4, n. 1, and the Court should not entertain them here, *see* Sup. Ct. Rule 23.3. Doing so would encourage parties to abuse the emergency docket and “sandbag” opposing parties by spinning out new arguments and claims in their emergency applications.

⁹ Available at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-4009>.

Compounding these deficiencies, applicants repeatedly cite extra-record evidence from declarations and letters created after EPA finalized the Rule. Industry Appx. 437a-438a, 440a-449a. The Clean Air Act expressly limits judicial review of rulemakings to the administrative record. 42 U.S.C. § 7607(d)(7).

Even if these claims were not procedurally barred, they are particularly ill-suited for review on this Court’s emergency docket without the benefit of full briefing by the parties and record review by the lower court. Such fact-bound, highly technical judgments lie within the heartland of EPA’s technical pollution-control expertise and are subject to the “deferential” arbitrary and capricious standard of review. *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); see *FERC v. Elec. Power Supply Ass’n*, 136 S. Ct. 760, 782 (2016) (noting especially deferential review warranted in a “technical area”). Even after consideration by the appeals court in the normal course of litigation, they would be the sort of matters on which a grant of certiorari is extremely unlikely.

Regardless, as described below, applicants’ technical claims are unlikely to succeed. EPA thoroughly considered and explained the Rule’s provisions in each of these areas, grounding its decisions in extensive record evidence.¹⁰

¹⁰ Even if any of these objections were valid (they are not) none would justify a stay of the entire rule. See *Gill v. Whitford*, 585 U.S. 48, 68 (2018) (“a remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established” (cleaned up)).

1. *EPA reasonably established the “best system of emission reduction” for associated gas.*

Despite failing to raise the issue in their D.C. Circuit stay motion,¹¹ industry applicants challenge EPA’s standards to reduce emissions of “associated gas” (gas produced alongside oil) at new oil wells.¹² They claim that EPA failed to (1) “consider the costs of routing associated gas” to market rather than flaring it; (2) consider the costs of routing “stranded gas,” which is located away from a sales line with sufficient capacity; (3) consider the cost of alternatives; and (4) demonstrate that routing gas to a sales line is “achievable.” Industry Appl. 19-22.¹³ None have merit.

First, EPA properly considered the costs of routing associated gas to a sales line. The Agency reviewed several sources of cost data, including those provided by commenters and a pipeline trade association, and determined data from the latter

¹¹ While applicant Continental Resources did assert arguments about the associated gas provisions in the D.C. Circuit, those arguments were made in *response* to stay motions and are therefore improperly before the court. *See supra* p. 4, n. 1.

¹² The final standards for new oil wells require operators to capture associated gas by routing it to a sales line, reinjecting it into a well, using it for power needs onsite, or using it for another useful purpose. 89 Fed. Reg. at 16,832. Operators are permitted to flare (burn the gas) if they annually certify the technical infeasibility of capture using these four methods. *Id.* Operators can also flare temporarily under certain circumstances like emergencies, maintenance events, and interruptions in service from pipelines. *Id.* at 16,887.

¹³ Industry applicants also argue, as Continental Resources improperly alleged in the D.C. Circuit, *supra* p. 4, n. 1, that EPA should have included an economic infeasibility exemption, and that the Rule’s technical infeasibility demonstration is arbitrary and capricious because it is unduly vague. These claims also contradict the record. EPA determined that the associated gas standards were cost-effective, 89 Fed. Reg. at 16,942, and that operators could reasonably amortize costs over the lifetime of a new well. *Id.* at 16,944. The Agency explained that an exemption for economic infeasibility was therefore not warranted and would provide preferential treatment to wells with less efficient operations. *Id.* at 16,951. Additionally, the Rule includes detailed guidance on demonstrating technical infeasibility, including the process, *id.* at 16,887-88, examples, *id.* at 16,888, and an explanation that EPA would not consider early-development technologies to be technically viable, *id.* at 16,887.

to be reliable. 89 Fed. Reg. at 16,941-42. Contrary to industry applicants' incorrect assertion that it simply "assum[ed]" the availability of a sales line, Industry Appl. 19, EPA used the trade association data to calculate the cost of constructing and using a new sales line, 89 Fed. Reg. at 16,941-42. EPA then determined that the cost-per-ton of abating methane and other pollutants through this approach was well within the range that EPA has found reasonable. *Id.* at 16,942, 16,863-65.¹⁴

Second, EPA considered the cost of routing stranded gas to a sales line. The Agency first identified a "representative well" with volumes of associated gas typical for the industry. *Id.* at 16,941. It then evaluated cost estimates for installing, operating, and maintaining sales lines of various pipe sizes at varying distances to take that gas to market and determined that constructing lines up to 50 miles was cost-effective. *Id.* at 16,942. Industry applicants identify no defects in EPA's methodology.

Third, EPA considered the cost of alternative solutions to mitigating associated gas emissions, including flaring or burning the gas (which reduces but does not eliminate emissions) as well as reinjection, using gas on-site, and using gas for another useful purpose (each of which eliminates emissions). 86 Fed. Reg. 63,110, 63,237-38 (Nov. 15, 2021); 89 Fed. Reg. at 16,941.¹⁵ The Agency determined the cost data for flaring and routing gas to a sales line to be the most reliable and

¹⁴ *Contra* Industry Appl. 20 (citing only to the proposed rule).

¹⁵ *See also*, Oil & Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Background Technical Support Document 4-5 to 4-16 (Nov. 2023) ("TSD"), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-3988>.

conducted a detailed analysis comparing the cost and emission reduction benefits for both before selecting routing to a sales line as the “best system of emission reduction.” 89 Fed. Reg. at 16,941. Again, industry applicants identify no flaws in EPA’s approach.

Fourth, EPA properly determined that routing associated gas to market rather than flaring it is “achievable.” Other industry commenters—including the American Petroleum Institute—indicated that routing gas to market for sale is “standard business,” *id.* at 16,942, and that before operators drill wells, it is “standard practice” to drill near existing lines or coordinate with pipeline operators to ensure adequate sales line capacity exists, *id.* at 16,944-45; *see also infra* p. 27. In supporting its determination that capturing and selling associated gas, not flaring, is the “best system,” EPA noted that operators representing approximately 60 percent of routine flaring worldwide had already committed to eliminate this wasteful practice by 2030. 89 Fed. Reg. at 16,943. It also cited evidence that operators are complying with nearly identical standards in Colorado and New Mexico, observing that commenters who opposed limits on routine flaring “did not demonstrate or even explain that routing to a sales line or the alternatives were infeasible, only that specific circumstances could make certain alternatives more attractive than others.” *Id.* at 16,944. In sum, EPA reasonably justified its requirements for associated gas.

2. EPA has granted reconsideration of the Rule's net heating value monitoring provisions, which are in any event reasonable.

Applicants challenge the Rule's requirements to monitor "net heating value" at new sources such as storage vessels that are utilizing a control device like a flare to achieve compliance. *See* Industry Appl. 26. These monitoring requirements serve an important emission control purpose: to ensure that flares operate properly and achieve the required pollution reductions. 89 Fed. Reg. at 16,894; *contra* Industry Appl. 27. Applicants did not raise this issue in the stay litigation below. *See supra* p. 4, n. 1. Moreover, EPA has agreed to reconsider these provisions,¹⁶ and the D.C. Circuit has held the claims addressing them in abeyance at the request of many of the applicants themselves. Proposed Briefing Format and Schedule 3-4, ECF No. 2070322 (Aug. 15, 2024) (requesting abeyance of these claims in order to "obviate the need to present them to this Court" and thus avoid "wast[ing] judicial and party resources"); Order 2, ECF No. 2073084 (Sept. 4, 2024) (severing net heating value monitoring issue and holding it in abeyance).

In any event, the monitoring requirements are reasonable, and applicants' arguments, which are largely based on extra-record declarations, are unlikely to succeed. Notwithstanding applicants' claims to the contrary, *see* Industry Appl. 27, EPA considered comments related to gas compositional variability. The Agency explained that monitoring was necessary because variability "can have a dramatic effect on the combustion efficiency of flares." 89 Fed. Reg. at 16,965-66. Moreover,

¹⁶ Letter from Tomás E. Carbonell, EPA Deputy Assistant Administrator for Stationary Sources to Holly Hopkins, Am. Petroleum Inst. & Wendy Kirchoff, Am. Expl. & Prod. Council (May 6, 2024), https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx.-5.6.24-signed_1.pdf.

industry applicants ignore the Rule’s express mechanism allowing operators to “request approval from the Administrator to monitor different operating parameters.” 89 Fed. Reg. at 17,103. EPA also responded to comments related to the burden of testing requirements by reducing the number of required samples for initial monitoring of control devices by an order of magnitude, *see id.* at 16,966; *contra* Industry Appl. 27, and similarly noted that operators could seek variances from prescribed testing methods.¹⁷ EPA thus “reasonably considered the relevant issues and reasonably explained the decision.” *Prometheus Radio*, 592 U.S. at 423.

EPA also gave operators ample lead time—180 days—to meet the net heating value monitoring requirements. *See supra* p. 20, n. 16. Relying on an extra-record letter submitted to EPA by a testing service after the rule was finalized, applicants assert that insufficient laboratory capacity prevents compliance. Industry Appl. 28. Even if it were part of the record, that letter does not support applicants’ claims because it wrongly assumed a compliance deadline within 60 days, a fact applicants conveniently omit in quoting the letter. *Compare* Industry Appx. 437a, *with* Industry Appl. 28.¹⁸

¹⁷ Oil & Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule II-17-4, II-17-61 (Nov. 2023), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-4009>.

¹⁸ Notably, applicants have greatly inflated this argument in their declaration before this Court compared to their declaration filed below. Before the D.C. Circuit, when it mistakenly believed the compliance window was 60 days, Continental Resources asserted it had “at least 150” sources subject to these monitoring requirements and completing the required monitoring would take “at least 79 days.” Decl. of Sean Flynn, Industry Appx. 430a, ¶¶ 36, 38 (May 6, 2024). Continental Resources has now raised those numbers to “at least 175” sources and that monitoring will take “over 400 days” to complete. Decl. of Sean Flynn, Industry Appx. 445a, ¶¶ 24-25 (Aug. 23, 2024).

3. *Industry applicants mischaracterize the role of legally and practicably enforceable permit limits.*

In another claim not raised below, applicants challenge an option for storage vessels to determine whether they are subject to new source emission limits, wrongly characterizing this pathway as “new [legally and practicably enforceable] requirements.” Industry Appl. 29. This claim is both forfeited and meritless.

Applicants mischaracterize an optional pathway to reduce potential emissions below regulatory thresholds as a requirement. The Rule applies only to storage vessels with a “potential to emit” exceeding certain quantities. The Rule also allows operators to rely on legally and practicably enforceable permit limits when calculating whether a new or modified storage vessel has a “potential to emit” below those thresholds.¹⁹ *See* 89 Fed. Reg. at 16,974. If a storage vessel is subject to enforceable permit limits preventing emissions over those thresholds, then it is not covered by the Rule. *See id.* Agreeing to abide by such limits “is a voluntary decision on the part of an owner or operator,” *id.* at 16,977, making it “an option, not a requirement,” *id.*; *contra* Industry Appl. 31 (describing these as “requirements”).

Applicants concede that in “a vacuum, these requirements would not be problematic,” Industry Appl. 29, but object to EPA’s revised criteria for permit limits to be considered legally and practicably enforceable. *Id.* at 29-30. But EPA has long used similar criteria, and they are important to ensure that the emission

¹⁹ Applicants only challenge the application of these criteria to storage vessels constructed or modified after December 6, 2022, when EPA published its supplemental proposal. Applicants misleadingly label these existing sources, but the statute makes clear they qualify as new sources, 42 U.S.C. § 7411(a)(2); operators were thus “on notice” of the criteria at issue, 89 Fed. Reg. at 16,977.

reduction for which operators may “take credit” are actually being achieved. *Id.* at 30. The Agency explained that its revised criteria for evaluating the enforceability of these permit limits were necessary because previous limits were “often of such a general nature as to be unenforceable or otherwise lack[ed] measures to ensure the required emissions reductions.” 89 Fed. Reg. at 16,975.

The remainder of applicants’ argument relates not to the Rule, but to the speed at which states are providing guidance to operators on enforceable permits and speculation about how EPA will evaluate different permit limits. *See* Industry Appl. 30-31. These arguments do not bear on the Court’s evaluation of EPA’s record-based decision. 42 U.S.C. § 7607(d)(7)(A) (limiting review to the record). In any event, industry applicants’ extra-record materials confirm that several states have already chosen to move forward with adjustments to their permitting requirements to support this optional pathway. Industry Appl. 30.

4. *EPA reasonably tailored leak monitoring standards for different classes of well sites.*

In the sole claim they did raise before the D.C. Circuit, industry applicants object to EPA’s approach to subcategorizing wells for fugitive emission (or leak) monitoring. EPA classified well sites into four subcategories based upon the type and amount of equipment at the site. It then tailored monitoring requirements so smaller sites with less leak-prone equipment are subject to audio, visual, and olfactory inspections that can easily be completed by workers visiting the site for other purposes, while more complex sites must monitor with optical gas imaging cameras or other methane-detecting instruments. While industry applicants

complain that the Rule imposes instrument-based monitoring requirements on marginal wells (those that produce smaller amounts of oil or gas), they ignore that under EPA's approach, between 50 and 60 percent of wells nationwide (most of them marginal) are subject only to the lowest-cost audio, visual, and olfactory inspections, not instrument-based monitoring. *See* TSD at 6-3, 6-4, 6-8.

Applicants assert that EPA should have subcategorized well sites by estimated emissions rather than equipment. Industry Appl. 31-32. Yet EPA's subcategories *are* based on emissions, sensibly using the presence of leak-prone equipment as a proxy for leaks themselves, 87 Fed. Reg. 74,702, 74,725 (Dec. 6, 2022). This approach is eminently reasonable since the entire purpose of monitoring is to find and repair equipment leaks. And as the Agency explained at length, a robust body of science supports its determination to base subcategories on a site's equipment rather than an alternative metric like throughput (the amount of oil and gas produced from the site), which is poorly predictive of emissions. 89 Fed. Reg. at 16,905-06; *see also* 87 Fed. Reg. at 74,731. The record evidence indicates that equipment types and counts correlate closely to emissions from leaks, 89 Fed. Reg. at 16,906, 16,990, and it is simpler for industry to implement and regulators to enforce, 87 Fed. Reg. at 74,723-24 (industry commenters objected to an estimated emissions approach, calling it "challeng[ing]" and "burdensome").

Moreover, applicants assert that EPA "failed to adequately consider the regulatory compliance costs" to marginal wells. Industry Appl. 32. But the Agency carefully evaluated the cost impacts of its approach to marginal wells in an entire

section of its Technical Support Document titled “Financial Analysis of Marginal Wells.” TSD at 6-1 to 6-15. It found that many marginal wells, which have average profits up to \$42,000 per well in a year, would be subject to annual monitoring costs of just \$336-\$660, *id.* at 6-7 to 6-8, while the more complex sites with leaky equipment would be subject to annual monitoring costs of about \$3,000. 87 Fed. Reg. at 74,732, tbl.11. Petitioners have no response to EPA’s finding that such costs are reasonable.

II. APPLICANTS HAVE NOT DEMONSTRATED IRREPARABLE HARM

When “the moving party has not demonstrated irreparable harm, then this Court can avoid delving into the merits.” *Labrador v. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring). Environmental and public health respondents join EPA and state respondents’ arguments respecting state applicants’ claims of irreparable harm and confine our arguments here to industry applicants’ claims. Before this Court, industry applicants allege harm only from a limited number of the Rule’s provisions and only to one specific operator—Continental Resources—an intervenor that did not move for a stay in the D.C. Circuit. Even assuming Continental is permitted to allege irreparable harm here after failing to move for a stay below, its assertions lack merit. Its alleged injuries are specific to issues now held in abeyance, result from its own actions, rely on faulty legal theories, and are otherwise dubious. Even taking Continental’s assertions at face value, they would be grossly insufficient to support a sweeping stay of the entire Rule. Applicants have not demonstrated irreparable harm; the Court should deny the application.

A. Continental’s alleged operational harms are illusory.

Continental alleges three operational harms based on cost and compliance periods. These stem from the Rule’s provisions for net heating value monitoring, associated gas at oil wells, and enforceable permit limits. *See* Industry Appl. 34-35; Industry Appx. 443a-448a.²⁰ These alleged harms are unlikely to occur at all.

As discussed, EPA has granted reconsideration on net heating value monitoring, and the D.C. Circuit has held the issue in abeyance at the request of industry petitioners—a request that is hard to square with the claim, just weeks later, that they are irreparably harmed by these same provisions. *See supra* p. 20 n. 16; Proposed Briefing Format 3-4, ECF No. 2070322 (August 15, 2025), (requesting abeyance of issues covered by agency reconsideration process because it would “obviate the need to present them to this Court” and thus avoid “wast[ing] judicial and party resources”); Per Curiam Order 2, ECF No. 2073084 (September 4, 2024) (severing net heating value monitoring issue and holding it in abeyance). Furthermore, operators may seek variances from prescribed test methods. *Supra* p. 21. Continental has not claimed it has done so, and its failure to pursue this available pathway further undermines its asserted harms.

The other alleged operational harms are either illusory or would stem from Continental’s own actions. On the provisions for associated gas at oil wells, Continental claims difficulties with routing stranded gas to a sales line rather than

²⁰ While industry applicants challenge the fugitive monitoring requirements for marginal wells as arbitrary and capricious, they do not allege any irreparable harm stemming from those requirements, thus failing to satisfy the basic requirements for a stay.

flaring it and the supposed burden of making a technical infeasibility demonstration. Industry Appl. 34. But Continental has not explained why it cannot implement any one of the other three available mitigation options. *Compare* Industry Appx. 443a ¶ 17 (alleging inability to comply with the option to route gas), *with id.* ¶ 15 (acknowledging the Rule’s four compliance options). This alleged difficulty also starkly contrasts with statements from Continental’s operator peers, who emphasized throughout the rulemaking process that they do not bring on new wells unless they have access to a sales line. *See, e.g.,* Pioneer Natural Resources Comment, EPA-HQ-OAR-2021-0317-2298, at 2; BP America, Inc. Comment, EPA-HQ-OAR-2021-0317-2409, at 12. Indeed, much of the industry has already made voluntary commitments to eliminate flaring. *See* 89 Fed. Reg. at 16,943-44.

Finally, this Court need not consider Continental’s allegations about harm from legally and practically enforceable permit limits because neither Continental nor the other industry applicants claimed any such harm below. *See supra* p. 4, n. 1. Moreover, this alleged harm is tied to a voluntary, alternative pathway to avoid compliance with the Rule’s requirements, and any alleged harm depends on whether or not Continental chooses to take advantage of optional permit limits to demonstrate that one or more of its storage tanks do not qualify as affected sources under the Rule. *See supra* pp. 22-23. The availability of that option depends on state policies that may or may not yet exist and subsequent actions by EPA to review such policies, the outcome of which Continental admits is “unclear.” Industry Appx. 448a ¶ 34. Continental thus “relies on a highly attenuated chain of possibilities,”

Clapper v. Amnesty Int'l, 568 U.S. 398, 410 (2013), falling short of the threshold for establishing irreparable harm. Apart from the speculative nature of these claims, Continental—a company with a recent market capitalization of more than \$26 billion²¹—has not demonstrated that complying with the underlying standards would cause it irreparable harm.

B. Continental’s other alleged injuries are speculative and non-cognizable.

Beyond its alleged operational injuries, Continental’s remaining harm assertions are conjectural, rooted in faulty legal theories, or both. Regarding alleged injuries resulting from the Rule’s super-emitter provisions, Continental piles speculation upon speculation. For the company to experience *any* effects from that program, multiple, speculative future events would have to occur. A third-party notifier must be certified;²² next, that notifier must choose to conduct a survey, identify a large emissions event originating from Continental’s equipment, and report it to EPA; and finally, EPA itself must then determine that the notification is accurate. 40 C.F.R. § 60.5371b(c). The “one-step removed, anticipatory nature of [these] alleged injuries” fails to establish a “substantial risk that, in the near future, at least one” qualified third-party will report a super-emitter event originating from Continental’s operations, all “in response to” the Rule. *See Murthy v. Missouri*, 144

²¹ Rextag, Continental Resources Profile: 2022 vs 2023 Overview with 2024 M&A Moves (Apr. 4, 2024), <https://rextag.com/blog/Continental-Resources-Profile-2022-vs-2023-Overview-with-2024-M-A-Moves>.

²² Under the program, third parties must apply to be notifiers and use preapproved technologies. 40 C.F.R. § 60.5371b(a). No technology applications or approvals have occurred to date, and EPA may take up to 270 days to approve a requested technology. 40 C.F.R. § 60.5398b(d)(1)(iii).

S. Ct. 1972, 1986 (2024). In fact, even without the program, private parties are perfectly free to notify EPA of any observed leaks or other apparent large-scale emissions event resulting from Continental’s operations. The company thus fails to demonstrate that, even if it experienced a cognizable injury from such a sequence of events, the Rule would have caused it.

The one example Continental provides of an independent actor notifying it of a large emissions event before the program took effect does not help its argument. *See* Industry Appl. 37. Although the company asserts that the report took “significant time” to investigate, *id.*, it actually took only five hours, *id.* at 432a, ¶ 48. Furthermore, Continental has not established this report was the sort that would have been covered under the Rule’s provisions regarding the size of the emissions event, qualifying technology, and third-party certification status. *See* 40 C.F.R. § 60.5371b (describing program’s requirements). What the proffered example *does* illustrate is that third parties have “independent incentives” to investigate large emission events even without the Rule’s super-emitter provisions in place. *See Murthy*, 144 S. Ct. at 1987. Thus, because any of its purported impacts occurred independent of the Rule, this anecdote does not demonstrate that Continental would be injured “absent a stay.” *See Nken*, 556 U.S. at 434.

Continental also has no cognizable reliance interests in perpetuating state authority over oil and gas sector methane emissions to the exclusion of EPA’s regulatory efforts. Section 111(d) requires EPA to issue existing source guidelines for source categories covered by new source rules, *see* 42 U.S.C. § 7411(d)(1), and the

proposed rules provided Continental with years of notice, *see* 89 Fed. Reg. at 16,822-23 (describing 2021 and 2022 proposals). As EPA explained below, “Continental cannot have legitimately relied on the indefinite application of preexisting State standards.” *See* EPA Reply 3, ECF No. 2055082 (May 17, 2024).

C. Applicants’ Litigation Conduct Weighs Against a Stay

Applicants’ own conduct in this litigation undermines their claims of irreparable harm, while at the same time working inequity upon respondents, other stakeholder communities, and the public at large, all of whom benefit from timely implementation of the Rule.

EPA released the Rule on December 2, 2023,²³ and it was published in the Federal Register on March 8, 2024, opening the period for judicial review. 89 Fed. Reg. at 16,820. State applicants filed a motion for stay below on April 12, 2024, ECF No. 2049412, and industry applicants (but not Continental, who never filed a stay motion) followed suit on May 17, 2024, ECF No. 2055134. The D.C. Circuit unanimously rejected the stay motions on July 9, 2024. ECF No. 2063659.

Evincing no intention of renewing their efforts to procure a stay, applicants advocated for a protracted briefing schedule that would preclude the D.C. Circuit from hearing oral argument in the case until the fall of 2025, further requesting that certain issues be held in abeyance pending EPA’s administrative

²³ EPA, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (pre-publication) (signed Nov. 30, 2023), https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsp-eg-climate-review-2060-av16-final-rule-20231130.pdf.

reconsideration. *See* Briefing Format Submission 3, 9-10, ECF No. 2070322 (August 15, 2024). The D.C. Circuit granted industry petitioners’ requested schedule over EPA’s proposal, which would have had briefing completed weeks earlier for a spring 2025 oral argument. *See* ECF No. 2073084.

Finally, on August 23 and 26, 2024, state and industry applicants filed their applications for an emergency stay with this Court—more than six weeks after the D.C. Circuit denied a stay, and shortly after industry applicants sought decidedly non-expedited briefing on the merits below. This interval of six weeks is far longer than in other cases where parties have sought emergency relief from this Court based on claimed irreparable harm from environmental regulations.²⁴

Industry applicants’ successful efforts to push off D.C. Circuit merits review by months belies any serious claim of urgency. *See Ruckelshaus v. Monsanto, Co.*, 463 U.S. 1315, 1318 (1983) (noting “failure to act with greater dispatch tends to blunt [applicant’s] claim of urgency and counsels against the grant of a stay”) (Blackmun, J., in chambers). Even if their case for a stay were substantial—which it is not—their conduct would be a good reason to deny one.

III. A STAY WOULD HARM RESPONDENTS AND IS NOT IN THE PUBLIC INTEREST

“The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction.” *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 500 (1941). A stay is decidedly not in

²⁴ *See, e.g., West Virginia v. EPA*, Nos. 15A773, et al. (Clean Power Plan stay applications filed between five and eight days of D.C. Circuit stay denial on Jan. 21, 2016, Order, D.C. Cir. No. 15-1363 (ECF No. 1594951)).

the public interest here. Indeed, Section 111 contains an express mandate to abate dangerous pollutants, and recent acts of Congress specifically support prompt remediation of methane emissions under Section 111. The balance of the equities also clearly weighs against a stay: the resulting increases in emissions of methane and other health-harming pollution from the oil and gas sector would cause substantial harm to environmental and public health respondents' members and the public.

A. Recent Congressional Actions Underscore the Public Interest in Timely Implementation of the Rule.

The “particular regard for the public consequences” of an injunction includes a careful examination of relevant acts of Congress as manifestations of public interest. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-14 (1982). Here, a stay would interfere with national statutes and rules intended to reduce the amount of pollution that can “reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b)(1)(A); *see* 89 Fed. Reg. at 16,837 (discussing greenhouse gas endangerment finding, 74 Fed. Reg. 66,496 (December 15, 2009)). Two recent acts of Congress directly address regulation of methane pollution from oil and gas operations and highlight Congress’s pointed interest in ensuring prompt reductions in these emissions under Clean Air Act Section 111.

The 2021 Legislation. In 2021, Congress passed legislation under the Congressional Review Act, 5 U.S.C. §§ 801-808, invalidating a deregulatory rule

EPA issued under the preceding administration²⁵ that had (1) rescinded methane standards for new oil and gas sources and (2) removed the transmission and storage segments from the oil and gas source category. *See* Pub. L. No. 117-23 (2021) (Addendum A).

This 2021 legislation reinstated EPA’s 2016 methane standards for new oil and gas sources²⁶ and prohibited any future rule that would be “substantially the same” as the deregulatory action Congress disapproved, 5 U.S.C. § 801(b)(2). By restoring methane standards for new oil and gas sources under Section 111(b), Congress also reaffirmed the Agency’s obligation to adopt methane controls for existing oil and gas sources, which are required under Section 111(d) for any source category subject to new source standards for pollutants such as methane. 42 U.S.C. § 7411(d)(1); *see also West Virginia*, 597 U.S. at 710 (“[O]nce EPA has set *new* source standards addressing emissions of a particular pollutant under section 111(b) . . . it must then address emissions of that same pollutant by existing sources” (cleaned up)).

The 2022 Legislation. EPA proposed the challenged Rule, including new source standards and emissions guidelines for existing sources, to reduce methane and other pollutants from oil and gas facilities on November 15, 2021. 86 Fed. Reg. at 63,110. That proposal contained key elements of the final Rule that applicants

²⁵ 85 Fed. Reg. 57,018 (Sept. 14, 2020).

²⁶ 81 Fed. Reg. 35,824 (June 3, 2016).

now challenge, including presumptive standards for state plans and emission limits for various components of oil and gas systems. *See, e.g., id.* at 63,117-18, 63,201.

The next year, Congress passed the Inflation Reduction Act, which, among other things, added Section 136 to the Clean Air Act specifically addressing methane emissions from the oil and gas sector. *See* Pub. L. No. 117-169, § 60113 (2022) (codified at 42 U.S.C. § 7436) (Addendum B). Section 136 includes a “waste emissions charge” applicable to oil and gas facilities. 42 U.S.C. § 7436(c). Expressly referencing EPA’s 2021 proposal, the statute exempts sources from the emissions charge if they are complying with Section 111 methane standards that have been “approved and in effect in all States” and that “will result in equivalent or greater emissions reductions as would be achieved by [the November 2021 proposal].” *Id.* § 7436(f)(6). The exemption leaves no doubt Congress intended to encourage swift implementation of protective methane standards under Section 111.

In addition, Congress provided in Section 136 more than \$1.5 billion in funding to help states and other entities monitor and mitigate methane emissions. This allocation included \$700 million dedicated specifically to reducing emissions at “marginal” wells. *Id.* § 7436(a)-(b). Thus far, EPA and the Department of Energy

have committed \$350 million of these funds as grants to states, including several of the applicants.²⁷

Both the 2021 and 2022 legislative actions demonstrate that Congress regards timely implementation of Clean Air Act Section 111 limits on oil and gas emissions as a national priority. A stay would undermine those public interests.

B. The Balance of Equities Does Not Favor a Stay.

Environmental and public health respondents' members—and the public—would face substantial harm from a stay. Methane is responsible for a quarter of the climate warming we are experiencing today. Xu Decl. ¶ 2 (Attachment I to Opp. of Env't & Health Resp't-Intvs. to Mot. for Stay, ECF No. 2053103 (May 6, 2024)). Because methane is a highly potent greenhouse gas in the near-term, reducing these emissions—particularly from the oil and gas sector, the largest industrial source in the U.S.—is one of the most important steps to mitigating the immediate impacts of climate change, including extreme heat, drought, and wildfires. Xu Decl. ¶¶ 2-3; 89 Fed. Reg. at 16,824. Allowing increased methane pollution will exacerbate ongoing climate impacts and bring the planet closer to irreversible climate tipping points. Xu Decl. ¶ 4. Even a one-year delay in implementing the existing source standards would allow 3.8 million additional tons of methane pollution—and cause billions of dollars in monetized climate damages. McVay Decl. ¶¶ 12, 14 (Attachment F to Opp. of Env't & Health Resp't-Intvs. to Mot. for Stay,

²⁷ See National Energy Technology Laboratory, Summary Information for External R&D Awards, Methane Emissions Reduction Program, <https://netl.doe.gov/node/2476?list=MERP>.

ECF No. 2053103 (May 6, 2024)). A year-long stay of the new source standards would similarly also result in hundreds of thousands of tons of additional methane pollution. *Id.*²⁸

Granting the applications would also exacerbate the substantial harm to public health caused by conventional oil and gas pollutants. A year-long delay in the Rule's effectiveness would result in more than one million additional tons of volatile organic compounds. *Id.* ¶ 12. These emissions are a major contributor to unhealthy levels of ground-level ozone, the primary component of smog, which can cause irreversible lung damage, asthma, cardiovascular conditions, stillbirths, and premature death. Southerland Intervention Decl., ¶¶ 6, 10, 11, 14, 18, 21 (Attachment 22 to Mot. to Intervene of Env't & Health Resp't-Intvs., ECF No. 2044639 (March 12, 2024)). A stay would also cause emissions of 39,000 additional tons of air toxics like benzene, which can cause cancer. McVay Decl. ¶ 12; Southerland Intervention Decl. ¶ 20. More than nine million people in the U.S. live within a half mile of an existing oil and gas site, a proximity detrimental to human health. Southerland Opposition Decl. ¶ 4 (Attachment H to Opp. of Env't & Health Resp't-Intvs. to Mot. for Stay, ECF No. 2053103 (May 6, 2024)). In 2016 alone, oil

²⁸ Industry applicants make no showing on the public interest. State applicants attempt to minimize the harms of additional pollution, citing the "long-term nature" of "climate-change concerns." State Appl. 32. But once emitted, climate-altering pollutants cannot feasibly be removed, and the harms (which, in the case of methane, are relatively near-term) become unavoidable.

and gas sector emissions caused 7,500 excess deaths and \$77 billion in health impacts. Southerland Intervention Decl. ¶ 24.

Applicants offer nothing that would offset the harm to the public from these certain pollution increases and health harms. State applicants’ speculative claims about impacts to the oil and gas industry and the price of oil and gas, State App. 31-32, run counter to the record, which shows that the Rule will have no substantial effect—around a 1% impact—on oil and gas production or prices.²⁹ Furthermore, any asserted impacts based on the Rule’s existing source provisions are not imminent, as industry will not be required to comply with state plans for years. *See* 89 Fed. Reg. at 16,835 (expecting existing source impacts to “begin in 2028”). On the other hand, staying those provisions will likely toll the deadlines for existing source requirements if the stay is eventually lifted, delaying the badly needed emission reduction benefits from those provisions. *See, e.g.,* Per Curiam Order, ECF No. 1518738, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014) (extending rule’s compliance deadlines by three years upon lifting a stay that had been in place since 2011).

Arguments regarding harm to industry also fail to account for the waste emissions charge imposed by the Inflation Reduction Act, 42 U.S.C. § 7436. As explained above, that provision exempts from the charge sources complying with the Rule once methane standards and plans “have been approved and are in effect.”

²⁹ EPA, Regulatory Impact Analysis of the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (Dec. 2023), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-4021>.

Id. § 7436(f)(6)(A)(i). If the standards and plans are delayed by a stay, sources will remain subject to the charge for longer. EPA estimates industry’s annual charge payments will be around \$700 million per year until the exemption becomes available, after which annual payments will fall to just \$13 million per year.³⁰ Thus, timely implementation of the standards will reduce industry exposure to the charge.

CONCLUSION

The applications for stays should be denied.

Respectfully submitted,

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³⁰ EPA, Regulatory Impact Analysis of the Proposed Waste Emissions Charge (Jan. 2024) at 5-16, Table 5-10, https://www.epa.gov/system/files/documents/2024-01/wec_ria.pdf.

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ADDENDUM

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Public Law 117–23
117th Congress

Joint Resolution

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review”.

June 30, 2021
[S.J. Res. 14]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Administrator of the Environmental Protection Agency relating to “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review” (85 Fed. Reg. 57018 (September 14, 2020)), and such rule shall have no force or effect.

Approved June 30, 2021.

LEGISLATIVE HISTORY—S.J. Res. 14 (H.J. Res. 34):

HOUSE REPORTS: No. 117–64 (Comm. on Energy and Commerce) accompanying H.J. Res. 34.

CONGRESSIONAL RECORD, Vol. 167 (2021):

Apr. 28, considered and passed Senate.

June 25, considered and passed House.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2021):

June 30, Presidential remarks.

○

SEC. 60113. METHANE EMISSIONS REDUCTION PROGRAM.

The Clean Air Act is amended by inserting after section 135 of such Act, as added by section 60107 of this Act, the following:

“SEC. 136. METHANE EMISSIONS AND WASTE REDUCTION INCENTIVE PROGRAM FOR PETROLEUM AND NATURAL GAS SYSTEMS. 42 USC 7436.

“(a) INCENTIVES FOR METHANE MITIGATION AND MONITORING.— In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$850,000,000, to remain available until September 30, 2028—

“(1) for grants, rebates, contracts, loans, and other activities of the Environmental Protection Agency for the purposes of providing financial and technical assistance to owners and operators of applicable facilities to prepare and submit greenhouse gas reports under subpart W of part 98 of title 40, Code of Federal Regulations;

“(2) for grants, rebates, contracts, loans, and other activities of the Environmental Protection Agency authorized under subsections (a) through (c) of section 103 for methane emissions monitoring;

“(3) for grants, rebates, contracts, loans, and other activities of the Environmental Protection Agency for the purposes of providing financial and technical assistance to reduce methane and other greenhouse gas emissions from petroleum and natural gas systems, mitigate legacy air pollution from petroleum and natural gas systems, and provide funding for—

“(A) improving climate resiliency of communities and petroleum and natural gas systems;

“(B) improving and deploying industrial equipment and processes that reduce methane and other greenhouse gas emissions and waste;

“(C) supporting innovation in reducing methane and other greenhouse gas emissions and waste from petroleum and natural gas systems;

“(D) permanently shutting in and plugging wells on non-Federal land;

“(E) mitigating health effects of methane and other greenhouse gas emissions, and legacy air pollution from petroleum and natural gas systems in low-income and disadvantaged communities; and

“(F) supporting environmental restoration; and

“(4) to cover all direct and indirect costs required to administer this section, prepare inventories, gather empirical data, and track emissions.

“(b) INCENTIVES FOR METHANE MITIGATION FROM CONVENTIONAL WELLS.—In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$700,000,000, to remain available until September 30, 2028, for

	activities described in paragraphs (1) through (4) of subsection (a) at marginal conventional wells.
	“(c) WASTE EMISSIONS CHARGE.—The Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, regardless of the reporting threshold under that subpart.
Definition.	“(d) APPLICABLE FACILITY.—For purposes of this section, the term ‘applicable facility’ means a facility within the following industry segments, as defined in subpart W of part 98 of title 40, Code of Federal Regulations: <ul style="list-style-type: none"> “(1) Offshore petroleum and natural gas production. “(2) Onshore petroleum and natural gas production. “(3) Onshore natural gas processing. “(4) Onshore natural gas transmission compression. “(5) Underground natural gas storage. “(6) Liquefied natural gas storage. “(7) Liquefied natural gas import and export equipment. “(8) Onshore petroleum and natural gas gathering and boosting. “(9) Onshore natural gas transmission pipeline.
Time periods.	“(e) CHARGE AMOUNT.—The amount of a charge under subsection (c) for an applicable facility shall be equal to the product obtained by multiplying— <ul style="list-style-type: none"> “(1) the number of metric tons of methane emissions reported pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, for the applicable facility that exceed the applicable annual waste emissions threshold listed in subsection (f) during the previous reporting period; and “(2)(A) \$900 for emissions reported for calendar year 2024; “(B) \$1,200 for emissions reported for calendar year 2025; or <ul style="list-style-type: none"> “(C) \$1,500 for emissions reported for calendar year 2026 and each year thereafter.
Fees.	“(f) WASTE EMISSIONS THRESHOLD.— <ul style="list-style-type: none"> “(1) PETROLEUM AND NATURAL GAS PRODUCTION.—With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (1) or (2) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed— <ul style="list-style-type: none"> “(A) 0.20 percent of the natural gas sent to sale from such facility; or “(B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale. “(2) NONPRODUCTION PETROLEUM AND NATURAL GAS SYSTEMS.—With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (3), (6), (7), or (8) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility.

“(3) NATURAL GAS TRANSMISSION.—With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (4), (5), or (9) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility.

“(4) COMMON OWNERSHIP OR CONTROL.—In calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).

“(5) EXEMPTION.—Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.

Determination.

“(6) EXEMPTION FOR REGULATORY COMPLIANCE.—

Determination.

“(A) IN GENERAL.—Charges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111 upon a determination by the Administrator that—

“(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities; and

“(ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled ‘Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review’ (86 Fed. Reg. 63110 (November 15, 2021)), if such rule had been finalized and implemented.

“(B) RESUMPTION OF CHARGE.—If the conditions in clause (i) or (ii) of subparagraph (A) cease to apply after the Administrator has made the determination in that subparagraph, the applicable facility will again be subject to the charge under subsection (c) beginning in the first calendar year in which the conditions in either clause (i) or (ii) of that subparagraph are no longer met.

Time period.

“(7) PLUGGED WELLS.—Charges shall not be imposed with respect to the emissions rate from any well that has been permanently shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator.

Determination.

“(g) PERIOD.—The charge under subsection (c) shall be imposed and collected beginning with respect to emissions reported for calendar year 2024 and for each year thereafter.

“(h) REPORTING.—Not later than 2 years after the date of enactment of this section, the Administrator shall revise the requirements of subpart W of part 98 of title 40, Code of Federal Regulations, to ensure the reporting under such subpart, and calculation of charges under subsections (e) and (f) of this section, are based on empirical data, including data collected pursuant to subsection (a)(4), accurately reflect the total methane emissions and waste emissions from the applicable facilities, and allow owners and operators of applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator, to demonstrate the extent to which a charge under subsection (c) is owed.

“(i) DEFINITION OF GREENHOUSE GAS.—In this section, the term ‘greenhouse gas’ means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.”.