

**ORAL ARGUMENT NOT YET SCHEDULED**

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

GPA MIDSTREAM ASSOCIATION,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY  
and GINA MCCARTHY, Administrator, U.S.  
Environmental Protection Agency,

Respondents.

Case No. 16-1267

(Consolidated under  
Case No. 16-1242)

**NON-BINDING STATEMENT OF ISSUES TO BE RAISED**

Petitioner GPA Midstream Association (“GPA Midstream”) submits this Non-binding Statement of Issues to be Raised in this case.

1. Whether the United States Environmental Protection Agency’s (“EPA’s”) issuance of a final rule entitled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources,” 81 Fed. Reg. 35,824 (June 3, 2016) (the “Rule”), was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act (“CAA”), the Administrative Procedure Act (“APA”), or other law.

2. Whether the Rule violates 42 U.S.C. § 7411(b)(1)(A) because EPA failed to make a separate determination that methane emissions from the oil and natural gas sector contribute significantly to the endangerment of public health or

welfare before issuing the Rule, which is a necessary prerequisite to regulation under the CAA.

3. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the Rule's delay of repair provisions for the leak detection and repair ("LDAR") program require compressor station and well site owners and operators to complete delayed repairs and replacements after triggering events other than planned shutdowns, including, but not limited to, unscheduled and emergency vent blowdowns.

4. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the Rule requires quarterly LDAR monitoring for compressor stations and semi-annual LDAR monitoring for well sites instead of annual LDAR monitoring.

5. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the Rule's LDAR monitoring plan requirements unnecessarily will impose significant burdens on compressor station and well site owners and operators while providing little, if any, benefit in fugitive emissions reductions.

6. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the Rule's recordkeeping requirements for LDAR monitoring, including, but not limited to, (a) the training

and experience of the OGI operator, (b) the wind speed, temperature and sky conditions, and (c) the type of equipment used to survey or resurvey equipment will impose significant burdens on compressor station and well site owners and operators while providing little, if any, benefit in fugitive emission reductions.

7. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the Rule applies different repair threshold levels for monitoring conducted by optical gas imaging (“OGI”) and Method 21.

8. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the zero-degree Fahrenheit waiver threshold for quarterly LDAR monitoring at compressor stations and well sites is too low to provide meaningful regulatory relief to compressor station and well site owners and operators that avoids significant and unnecessary burdens and protects the health and safety of monitoring and repair personnel.

9. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to include a definition for “compressors” that clearly excluded from regulation under the Rule all compressors other than the centrifugal and reciprocating compressors that are directly regulated under 40 C.F.R. Part 60, Subpart OOOOa, including, but not

limited to, vapor recovery unit (“VRU”) compressors used to recover vapors from compressor station equipment.

10. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the Rule includes compressors in the definition of “fugitive emissions component” despite having separate provisions that directly address fugitive emissions from compressors.

11. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the definition of “fugitive emissions component” is ambiguous and fails to give compressor station owners and operators sufficient notice of the components that may be subject to LDAR monitoring.

12. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA’s definition of “well site” is too expansive and could be interpreted to include equipment owned and operated by independent, legally distinct third parties that have no control over well site operations.

13. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not accordance with law because EPA failed to respond to comments submitted by GPA Midstream regarding the cost-effectiveness of LDAR monitoring for midstream assets located on well sites or near producers’ well pads,

including, but not limited, to measurement meters under the exclusive control of midstream operators.

14. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to include a provision in the Rule that excludes compressor stations and compressor station equipment from the definition of “affected facility” or otherwise waives the Rule’s requirements if the compressor station or equipment falls below the Rule’s affected source thresholds.

15. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the equation included in the Rule’s definition of Capital Expenditure is not representative of current economic conditions.

16. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because Table 3 to Subpart OOOOa of 40 C.F.R. Part 60 does not include “the collection of fugitive emissions components at a compressor station” among the equipment types that are excluded from the general reconstruction notification requirements in 40 C.F.R. § 60.15(d).

17. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law because EPA failed to give owners and

operators of compressor stations and well sites sufficient time to conduct initial LDAR monitoring at affected facilities.

18. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to give owners and operators of compressor stations and well sites sufficient time to repair leaking components after conducting LDAR monitoring.

19. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA's cost-benefit analysis for LDAR monitoring at compressor station sites and well sites underestimates the time and cost of conducting LDAR monitoring and overstates the associated benefits of quarterly and semi-annual LDAR monitoring, respectively.

20. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because, contrary to its statements in the preamble to the Rule, EPA failed to clarify in 40 C.F.R. §§ 60.5420(a)(1) and 60.5420a(a)(1) that the notification requirements in 40 C.F.R. § 60.15(d) do not apply to pneumatic controllers, centrifugal compressors, reciprocating compressors, storage vessels, and collections of fugitive emissions components at compressor stations.

21. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to clarify that VRUs

are not required to be operational when the VRU's associated storage vessel affected facility is not in service.

22. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to clarify whether the 95% emissions reduction requirement for centrifugal compressors, pneumatic pumps, and storage vessels must be met on a continuous or average basis.

23. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA requires owners and operators of storage vessels that emit less than 4 tons per year ("tpy") of volatile organic compounds ("VOCs") to determine the uncontrolled actual VOC emission rate on a monthly rather than annual basis.

24. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the Rule's provisions in 40 C.F.R. §§ 60.5400a(e) and 60.5422a(a) requiring compliance with 40 C.F.R. § 60.487a are vague and fail to provide owners and operators of affected facilities with notice of which portions of 40 C.F.R. § 60.487a are applicable.

25. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the recordkeeping requirements in 40 C.F.R. §§ 60.5340(c)(14) and 60.5340a(c)(14) fail to include cross-references to

the recordkeeping requirements in 40 C.F.R. §§ 60.5413(e)(4) and 60.5413a(e)(4), respectively.

26. Whether the Rule is arbitrary and capricious, an abuse of discretion or, otherwise not in accordance with law because the definitions of “certifying official” in 40 C.F.R. Part 60, Subparts OOOO and OOOOa and the definition of “responsible official” in 40 C.F.R. Part 60, Subpart OOOO include references to permits and permitting authorities despite the fact that 42 U.S.C. § 7411 is not a permitting program.

27. Whether the Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to clarify in 40 C.F.R. §§ 60.5410(c)(1) and 60.5410a(c)(1) that owners and operators of reciprocating compressor affected facilities must measure the number of hours or number of months of operation beginning with the latter of (1) initial startup, (2) the date of the relevant rulemaking proposal, or (3) the last rod packing replacement.

Respectfully submitted,

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Dated: September 7, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Non-binding Statement of Issues to Be Raised has been served, this 7<sup>th</sup> day of September, 2016, through the Court's CM/ECF system on all registered counsel.

/s/ Joel F. Visser

Joel F. Visser

*Counsel for GPA Midstream  
Association*