Remarks of Lucas Minich for the Clean Air Task Force on Oil and Natural Gas Sector; Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements, 82 Fed. Reg. 27,645 (June 16, 2017)

Dated: July 10, 2017

Good Morning,

On behalf of the Clean Air Task Force, I am truly glad for the opportunity to comment on this rule and the proposed stay. My comments today apply to both the proposed 2-year stay as well as the proposed 3-month stay. The provisions of the Oil and Gas New Source Performance Standards EPA is attempting to stay – particularly the leak detection and repair requirements – were lawfully promulgated to lower emissions and bring about significant health benefits while reducing wasted gas and climate pollution. Our substantial dismay upon learning of the initial 90-day stay for reconsideration was only magnified when news of the additional 2-year suspension was announced. However, these proposed stays are not only based on authority that the U.S. Court of Appeals for the District of Columbia (the "D.C. Circuit") has very recently held that the EPA does not have, but they are immensely harmful – particularly to children. Accordingly, EPA should withdraw the proposed stays.

First, EPA does not have the authority to stay these provisions under the Clean Air Act, which provides very limited authority to stay the effectiveness of rules promulgated under it. The D.C. Circuit held that section 307(d)(7)(B) allows for a single 90-day stay to reconsider a rule only when a party presents an objection of "central relevance" that was "impracticable" to raise during the period for public comment. Industry parties had ample opportunity to comment on all of the issues which EPA has proposed to stay here, thus the objections were not "impracticable to raise" and the Court vacated the stay. EPA cannot simply "extend" a stay that was never lawful in the first instance.

Second, EPA cannot base the proposed stays on Administrative Procedure Act section 705. The power to suspend rules under this emergency measure only applies to rules that have not yet become effective. However, the June 2016 effective date of the rule at issue had long passed by the time the stays were proposed. EPA attempts to conflate the concept of effective date and compliance date, but those phrases have two distinct meanings as the Agency itself has recognized in previous reconsideration proceedings. The language of Section 705 is clear; no agency can utilize it to postpone an already-effective rule.

Third, basic norms of Administrative Law require that changing the *substance* of a duly promulgated agency rule requires a factually justified new rulemaking proceeding. Changing compliance dates is considered a change to the substance of a rule. Simply subjecting a proposed stay to public comment is not sufficient to make it lawful, nor does EPA attempt to provide any reasoned basis rooted in fact explaining why these compliance dates should be postponed.

Not only are EPA's proposed stays unlawful, but they will cause significant harm to many Americans, especially those living near new and modified oil and gas facilities which will emit significant amounts of climate pollution, smog precursors, and air toxics that would otherwise have been controlled. The proposals attempt to stay leak detection and repair provisions that are the cornerstone of the rule, requiring operators of new sources to identify and repair natural gas leaks rather than venting or flaring gas containing large amounts of dangerous pollutants into the air. These provisions are responsible for over half of the methane reductions and nearly 90 percent of the toxic air emissions benefits this rule would provide. Additionally, EPA itself acknowledged in the proposal that the 2-year stay may have a disproportionate impact on the health of children.

These unlawful stays, therefore, are also a regrettably bad policy choice. While a new administration has authority to review rules on the books, agencies simply do not have the raw power to suspend, piecemeal, compliance dates of a rule at any given time. Such a policy structure would create uncertainty and economic chaos as regulated entities who commit to timely compliance would be disadvantaged in favor of their less-cooperative competitors, reducing the legitimacy of agency action across the board. Moreover, one of the purposes of the Clean Air Act is to advance pollution-reducing technology. The proposed stay compromises that goal; rather than rewarding the vanguard, the laggards will benefit, while the air and those who breathe it – particularly those whom the Act is intended to protect – will suffer.

Thank you again for affording the Clean Air Task Force the opportunity to comment on this proposal. I'd like to leave you with a reminder that the proposed stay is simply unlawful – it has no basis in either the Clean Air Act or the Administrative Procedure Act, and is premised as an extension of a stay based on authority that Courts have held EPA does not have. The EPA Administrator cannot just stay lawfully promulgated rules. It is also extremely bad policy – it likely would disproportionately harm the very people the rule was designed to protect – children and other vulnerable persons living near new oil and gas facilities. Finally, the proposed stay flouts core principles and policies underlying our system of administrative law, disrupting the certainty relied on by the regulated industry. This hearing alone does nothing to resolve the legal issues, although it does offer us an opportunity to point them out and emphasize our significant public health and policy concerns. EPA must leave the standards in place, including all the compliance dates. If the Agency wishes to revise the rule, propose a new rulemaking and provide the public with adequate opportunity for comment.

Thanks for your consideration. Clean Air Task Force will also submit written comments to the rulemaking record on this proposal.