6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010-0505; FRL-]

RIN 2060-AT63

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration and partial stay.

SUMMARY: By a letter dated April 18, 2017, the Administrator announced the convening of a proceeding for reconsideration of the fugitive emission requirements at well sites and compressor station sites in the final rule, "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," published in the **Federal Register** on June 3, 2016. In this action, the Environmental Protection Agency (EPA) is granting reconsideration of additional requirements in that rule, specifically the well site pneumatic pumps standards and the requirements for certification by professional engineer. In addition, the EPA is staying for three months these rule requirements pending reconsideration.

DATES: The action granting reconsideration is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The stay of §§ 60.5393a(b) through (c), 60.5397a, 60.5410a(e)(2) through (5) and (j), 60.5411a(d), 60.5415a(h), 60.5420a(b)(7), (8), and (12) and (c)(15) through (17) is effective from **[INSERT DATE OF PUBLICATION IN THE**

FEDERAL REGISTER] until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Tsirigotis, Sector Policies and Programs Division (D205-01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (888) 627-7764; email address: *airaction@epa.gov*.

Electronic copies of this document are available on EPA's Web site at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry*. Copies of this document are also available at *https://www.regulations.gov*, at Docket ID No. EPA-HQ-OAR-2010-0505.

SUPPLEMENTARY INFORMATION:

I. Background

On June 3, 2016, the EPA published a final rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule," 81 FR 35824 (June 3, 2016) ("2016 Rule"). The 2016 Rule establishes new source performance standards (NSPS) for greenhouse gas emissions and volatile organic compound (VOC) emissions from the oil and natural gas sector. This rule addresses, among other things, fugitive emissions at well sites and compressor station sites ("fugitive emissions requirements"), and emissions from pneumatic pumps. In addition, for a number of affected facilities (*i.e.*, centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels), the rule requires certification by a professional engineer of the closed vent system design and capacity, as well as any technical infeasibility determination relative to controlling pneumatic pumps at well sites. For further information on the 2016 Rule, see 81 FR 35824 (June 3, 2016).

On August 2, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of the 2016 Rule pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7607(d)(7)(B)).[1] Those petitions include numerous objections relative to the fugitive emissions requirements, well site pneumatic pump standards, and the requirements for certification by professional engineer. Under section 307(d)(7)(B) of the CAA, the Administrator shall convene a reconsideration proceeding if, in the Administrator's judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to three months during such reconsideration.

In a letter dated April 18, 2017, based on the criteria in CAA section 307(d)(7)(B), the Administrator convened a proceeding for reconsideration of the following objections relative to the fugitive emissions requirements: (1) the applicability of the fugitive emissions requirements to low production well sites, and (2) the process and criteria for requesting and receiving approval for the use of an alternative means of emission limitations (AMEL) for purposes of compliance with the fugitive emissions requirements in the 2016 Rule.

The EPA had proposed to exempt low production well sites from the fugitive emissions requirements, believing the lower production associated with these wells would generally result in lower fugitive emissions. 80 FR 56639. However, the final rule differs significantly from what was proposed in that it requires these well sites to comply with the fugitive emissions requirements based on information and rationale not presented for public comment during the

[1] Copies of these petitions are included in the docket for the 2016 Rule, Docket ID No. EPA–HQ–OAR–2010–0505.

proposal stage. See 81 FR 35856 ("… well site fugitive emissions are not correlated with levels of production, but rather based on the number of pieces of equipment and components"). It was therefore impracticable to object to this new rationale during the public comment period.

The AMEL process and criteria were included in the 2016 Rule without having been proposed for notice and comment. The EPA added the AMEL provisions in the final rule with the intent of, among other goals, reducing compliance burdens for those sources that may already be reducing fugitive emissions in accordance with a state requirement or other program that is achieving reductions equivalent to those required by the 2016 Rule. These AMEL provisions were also added to encourage the development and use of innovative technology, in particular for fugitive emissions monitoring. 81 FR 35861. However, issues and questions raised in the administrative petitions for reconsideration (*e.g.*, who can apply for and who can use an approved AMEL) suggest that sources may have difficulty understanding and applying for AMEL.

Both issues described above, which relate directly to whether certain sources must implement the fugitive emissions requirements, are of central relevance to the outcome of the 2016 Rule for the reasons stated below. Fugitive emissions are a significant source of emissions for many industries, and the EPA has promulgated numerous NSPS specifically for reducing fugitive emissions, including 40 CFR part 60, subpart KKK (addressing VOC leaks from on-shore natural gas processing plants), as standalone rules. The fact that the EPA chose here to promulgate the well site and compressor station fugitive emissions requirements along with other standards in the 2016 Rule does not make these requirements any less important than the other fugitive emissions standards; rather, because of their importance, they are a significant component of the 2016 Rule. The issues described above are important as they determine the

universe of affected facilities that must implement the fugitive emission requirements; as such, they are of central relevance to the outcome of the 2016 Rule. As stated in the April 18, 2017, letter, the EPA has convened an administrative proceeding for the reconsideration of the fugitive emissions requirements in response to these two objections.

II. Grant of Reconsideration of Additional Issues

Since issuing the April 18, 2017, letter, the EPA has identified objections to two other aspects of the 2016 Rule that meet the criteria for reconsideration under section 307(d)(7)(B) of the CAA. These objections relate to (1) the requirements for certification of closed vent system by professional engineer, and (2) the well site pneumatic pump standards.

A. Requirements for Certification of Closed Vent System by Professional Engineer

For closed vent systems used to comply with the emission standards for various equipment used in the oil and natural gas sector, the 2016 Rule requires certification by a professional engineer (PE) that a closed vent system design and capacity assessment was conducted under his or her direction or supervision and that the assessment and resulting report were conducted pursuant to the requirements of the 2016 Rule ("PE certification requirement"). Several petitioners for administrative reconsideration assert that the PE certification requirement was not proposed for notice and comment.[2] One petitioner notes that no costs associated with obtaining such certification were considered or provided for review during the proposal process.[3] The petitioner claims that there is no quantifiable benefit to the environment from this additional compliance demonstration requirement, while there is significant expense involved.[4]

[2] See Docket ID No. EPA-HQ-OAR-2010-0505-7682 and Docket ID No. EPA-HQ-OAR-2010-0505-7686.

[3] See Docket ID No. EPA-HQ-OAR-2010-0505-7682.

[4] Id.

Section 111 of the CAA requires that the EPA consider, among other factors, the cost associated with establishing a new source performance standard. See 111(a)(1) of the CAA. The statute is thus clear that cost is an important consideration in determining whether to impose a requirement. In finalizing the 2016 Rule, the EPA made clear that it viewed the PE certification requirement to be an important aspect of a number of performance standards in the that rule. The EPA acknowledges that it had not analyzed the costs associated with the PE certification requirement; therefore, it was impracticable for petitioners to provide meaningful comments during the comment period on whether the improved environmental performance this requirement may achieve justifies the associated costs and other compliance burden. This issue is of central relevance to the outcome of the 2016 Rule because the rule requires this PE certification for demonstrating compliance for a number of different standards, including the standards for centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels. For the reasons stated above, the EPA is granting reconsideration of the PE certification requirement.

B. Technical Infeasibility Determination (Well Site Pneumatic Pump Standards)

In the 2016 Rule, the EPA exempts a pneumatic pump at a well site from the emission reduction requirement if it is technically infeasible to route the pneumatic pump to a control device or a process. 81 FR 35850. However, the rule requires that such technical infeasibility be determined and certified by a "qualified professional engineer" as that term is defined in the final rule. During the proposal stage, the EPA did not propose or otherwise suggest exempting well site pneumatic pumps from emission control based on such certification. In fact, the technical infeasibility exemption itself was added during the final rule stage. Further, this certification requirement differs significantly from how the EPA has previously addressed another "technical

infeasibility" issue encountered by this industry. Specifically, the oil and gas NSPS subpart OOOO, which was promulgated in 2012, exempts hydraulically fractured gas well completions from performing a reduced emission completion (REC) if it is not technically feasible to do so, and requires documentation and recordkeeping of the technical infeasibility. See 40 CFR 60.5375. The 2016 Rule extends the REC requirement and associated technical infeasibility exemption to hydraulically fractured oil well completions and requires more detailed documentation of technical infeasibility. Neither subpart OOOO nor the 2016 Rule require that REC technical infeasibility be certified by a qualified professional engineer, nor was such requirement proposed or otherwise raised during the public comment period for these rules. In light of the fact that the EPA had not proposed such certification requirement for pneumatic pumps, and how this requirement differs from the EPA's previous treatment of a similar issue as described above, one could not have anticipated that the 2016 Rule would finalize such certification requirement for pneumatic pumps in the 2016 Rule. Further, believing that "circumstances that could otherwise make control of a pneumatic pump technically infeasible at an existing location can be addressed in the site's design and construction," the EPA does not allow such exemption for new developments in the 2016 Rule. 40 CFR 60.5393a(b)(5); see also, 81 FR 35849. The 2016 Rule refers to such new developments as "greenfield," which is defined as an "entirely new construction." 40 CFR 60.5430a.

The provisions described above were included in the 2016 Rule without having been proposed for notice and comment, and numerous related objections and issues were raised in the reconsideration petitions. With respect to the requirement that technical infeasibility be certified by a professional engineer, petitioners raised the same issues as those for closed vent system certification discussed in section II.A. In addition, several petitions find the definition of

greenfield unclear. For example, one petitioner questions whether the term "new" as used in this definition is synonymous to how that term is defined in section 111 of the CAA. Additional questions include whether a greenfield remains forever a greenfield, considering that site designs may change by the time that a new control or pump is installed (which may be years later). Petitioners also object to EPA's assumption that the technical infeasibility encountered at existing well sites can be addressed when "new" sites are developed. The issues described above dictate whether one must achieve the emission reduction required under the well site pneumatic pump standards, which were a major addition to the existing oil and gas NSPS regulations through promulgation of the 2016 Rule. Therefore, these issues are of central relevance to the outcome of the 2016 Rule.

As announced in the April 18, 2017, letter, and as further announced in this notice, the Administrator has convened an administrative reconsideration proceeding. As part of the proceeding, the EPA will prepare a notice of proposed rulemaking that will provide the petitioners and the public an opportunity to comment on the rule requirements and associated issues identified above, as well as those for which reconsideration was granted in the April 18, 2017, letter. During the reconsideration proceeding, the EPA intends to look broadly at the entire 2016 Rule. For a copy of this letter and the administrative reconsideration petitions, please see Docket ID No. EPA-HQ-OAR-2010-0505.

III. Stay of Certain Provisions

By this notice, in addition to the grant of reconsideration discussed in section II above, the EPA is staying the effectiveness of certain aspects of the 2016 Rule for three months pursuant to section 307(d)(7)(B) of the CAA pending reconsideration of the requirements and associated issues described above and in the April 18, 2017, letter. Specifically, the EPA is

staying the effectiveness of the fugitive emissions requirements, the standards for pneumatic pumps at well sites, and the certification by a professional engineer requirements. As explained above, the low production well sites and AMEL issues under reconsideration determine the universe of sources that must implement the fugitive emissions requirements. The 2016 Rule requires compliance with the closed vent system requirements, including certification by a professional engineer, in order to meet the emissions standards for a wide range of equipment (centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels); therefore, the issues relative to closed vent certification affect the ability of these equipment to comply with the 2016 Rule. The technical infeasibility exemption and the associated certification by professional engineer requirement, as well as the "greenfield" issues described above, dictate whether a source must comply with the emission reduction requirement for well site pneumatic pumps. In light of the uncertainties these issues generate regarding the application and/or implementation of the fugitive emissions requirements, the well site pneumatic pumps standards and the certification by professional engineers requirements, the EPA believes it is reasonable to stay the effectiveness of these requirements in the 2016 Rule, pending reconsideration. Therefore, pursuant to section 307(d)(7)(B) of the CAA, the EPA hereby stays the effectiveness of these requirements for three months.

This stay and related amendments will remain in place until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping.

Dated: _____.

_____

E. Scott Pruitt,
Administrator.

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60-- STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OOOOa--[AMENDED]

2. Section 60.5393a is revised by:

a. staying paragraphs (b) through (c) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER];** and

b. adding paragraph (f).

The additions read as follows:

§ 60.5393a What GHG and VOC standards apply to pneumatic pump affected facilities?

*** * * * ***

(f) Pneumatic pumps at a well site are not subject to the requirements of paragraph (d) and (e) of this section from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

§ 60.5397a [stayed]

3. Stay § 60.5397a.

4. Section 60.5410a is amended by:

a. staying paragraphs(e)(2) through (5) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**;

b. adding paragraph (e)(8); and

c. staying paragraph (j) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The additions read as follows:

§ 60.5410a How do I demonstrate initial compliance with the standards for my well, centrifugal compressor, reciprocating compressor, pneumatic controller, pneumatic pump, storage vessel, collection of fugitive emissions components at a well site, collection of fugitive emissions components at a compressor station, and equipment leaks and sweetening unit affected facilities at onshore natural gas processing plants?

*** * * * ***

(e) *** * ***

(8) Pneumatic pump affected facilities at a well are not subject to the requirements of (e)(6) and (7) of this section from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*** * * * ***

5. Section 60.5411a is amended by:

a. revising the introductory text;

b. staying paragraph (d) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; and

c. adding paragraph (e).

The additions and revisions read as follows:

§60.5411a What additional requirements must I meet to determine initial compliance for my covers and closed vent systems routing emissions from centrifugal compressor wet seal fluid degassing systems, reciprocating compressors, pneumatic pumps and storage vessels?

You must meet the applicable requirements of this section for each cover and closed vent system used to comply with the emission standards for your centrifugal compressor wet seal degassing systems, reciprocating compressors, pneumatic pumps and storage vessels except as provided in paragraph (e) of this section.

* * * * *

(e) Pneumatic pump affected facilities at a well site are not subject to the requirements of paragraph (a) of this section from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

6. Section 60.5415a is amended by:

a. revising the introductory text to paragraph (b) and adding paragraph (b)(4); and

b. staying paragraph (h) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The additions and revisions read as follows:

§60.5415a How do I demonstrate continuous compliance with the standards for my well, centrifugal compressor, reciprocating compressor, pneumatic controller, pneumatic pump, storage vessel, collection of fugitive emissions components at a well site, and collection of fugitive emissions components at a compressor station affected facilities, and affected facilities at onshore natural gas processing plants?

* * * * *

(b) For each centrifugal compressor affected facility and each pneumatic pump affected facility, you must demonstrate continuous compliance according to paragraph (b)(3) of this section except as provided in paragraph (b)(4) of this section. For each centrifugal compressor affected facility, you also must demonstrate continuous compliance according to paragraphs (b)(1) and (2) of this section.

* * * * *

(4) Pneumatic pump affected facilities at a well site are not subject to the requirements of paragraphs (b)(3) of this section from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

* * * * *

7. Section 60.5416a is amended by revising the introductory text, and adding paragraph (d) to read as follows:

§60.5416a What are the initial and continuous cover and closed vent system inspection and monitoring requirements for my centrifugal compressor, reciprocating compressor, pneumatic pump, and storage vessel affected facilities?

For each closed vent system or cover at your storage vessel, centrifugal compressor, reciprocating compressor and pneumatic pump affected facilities, you must comply with the applicable requirements of paragraphs (a) through (c) of this section, except as provided in paragraph (d) of this section.

* * * * *

(d) Pneumatic pump affected facilities at a well site are not subject to the requirements of paragraphs (a) and (b) of this section from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

8. Section 60.5420a is amended by:

a. revising the introductory text to paragraph (b);

b. staying paragraphs (b)(7), (8), and (12) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**;

c. adding paragraph (b)(13);

d. and staying paragraphs (c)(15) through (17) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The additions and revisions read as follows:

§60.5420a What are my notification, reporting, and recordkeeping requirements?

* * * * *

(b) Reporting requirements. You must submit annual reports containing the information specified in paragraphs (b)(1) through (8) and (12) of this section and performance test reports as

specified in paragraph (b)(9) or (10) of this section, if applicable, except as provided in paragraph (b)(13). You must submit annual reports following the procedure specified in paragraph (b)(11) of this section. The initial annual report is due no later than 90 days after the end of the initial compliance period as determined according to § 60.5410a. Subsequent annual reports are due no later than same date each year as the initial annual report. If you own or operate more than one affected facility, you may submit one report for multiple affected facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (8) of this section, except as provided in paragraph (b)(13). Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. You may arrange with the Administrator a common schedule on which reports required by this part may be submitted as long as the schedule does not extend the reporting period.

* * * * *

(13) The collection of fugitive emissions components at a well site (as defined in §60.5430a), the collection of fugitive emissions components at a compressor station (as defined in §60.5430a), and pneumatic pump affected facilities at a well site (as defined in §60.5365a(h)(2)) are not subject to the requirements of (b)(1) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

* * * * *