

**In the Supreme Court of the United States**

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

v.

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

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

v.

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

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**STATE RESPONDENT-INTERVENORS' OPPOSITION TO  
APPLICATIONS TO STAY FINAL RULE**

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September 20, 2024

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## TABLE OF CONTENTS

	<b>Page</b>
Introduction .....	1
Statement .....	4
A. Statutory background .....	4
B. The challenged rule.....	6
C. Procedural background.....	8
Argument.....	9
I. Applicants are unlikely to succeed on the merits.....	10
A. The presumptive standards for existing sources do not violate Section 111(d).....	11
B. The two-year deadline to submit state plans for existing sources is reasonable and reasonably explained .....	15
C. Industry applicants’ challenge to the Super Emitter Program and technical objections to the new source standards of performance lack merit .....	20
1. Super Emitter Program .....	20
2. Best system of emission reduction for associated gas .....	21
3. Net heating value monitoring requirements .....	26
4. Enforceable limits .....	28
5. Fugitive emissions monitoring requirements .....	29
II. Applicants have not satisfied the other criteria for obtaining a stay.....	32
Conclusion.....	38

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Does 1-3 v. Mills</i>	
142 S. Ct. 17 (2021) .....	9
<i>Essex Chem. Corp. v. Ruckelshaus</i>	
486 F.2d 427 (D.C. Cir. 1973) .....	22, 31
<i>Freedom Holdings, Inc. v. Spitzer</i>	
408 F.3d 112 (2d Cir. 2005) .....	34
<i>Hollingsworth v. Perry</i>	
558 U.S. 183 (2010) .....	9
<i>Labrador v. Poe</i>	
144 S. Ct. 921 (2024) .....	32
<i>Louisiana v. Am. Rivers</i>	
142 S. Ct. 1347 (2022) .....	9
<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i>	
463 U.S. 29 (1983) .....	19, 30
<i>Murthy v. Missouri</i>	
144 S. Ct. 1972 (2024) .....	10
<i>Murthy v. Missouri</i>	
144 S. Ct. 7 (2023) .....	9
<i>Nken v. Holder</i>	
556 U.S. 418 (2009) .....	8, 9, 10, 32, 34, 35
<i>Ohio v. EPA</i>	
144 S. Ct. 2040 (2024) .....	9, 10, 17, 20
<i>Packwood v. Senate Select Comm. on Ethics</i>	
510 U.S. 1319 (1994) .....	9
<i>Teva Pharms. USA, Inc. v. Sandoz, Inc.</i>	
572 U.S. 1301 (2014) .....	32
<i>West Virginia v. EPA</i>	
597 U.S. 697 (2022) .....	4, 5, 11, 14

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<i>Williams v. Zbaraz</i>	
442 U.S. 1309 (1979) .....	9
<i>Yeshiva Univ v. YU Pride All.</i>	
143 S. Ct. 1 (2022) .....	35, 36
 <b>STATUTES</b>	
15 U.S.C. § 2901 .....	6
42 U.S.C.	
§ 7408.....	4
§ 7410(a)(1).....	16
§ 7411(a)(1).....	4, 5, 7, 11, 14, 21, 24
§ 7411(b)(1)(A).....	4
§ 7411(d) .....	4, 5, 7, 11, 12, 15, 15, 19
§ 7411(h) .....	7, 13
§ 7412.....	4
§ 7414(a)(1).....	21
§ 7436(e) .....	37
§ 7436(g) .....	37
§ 7607(b)(1).....	15
 <b>REGULATIONS</b>	
40 C.F.R.	
pt. 60, subpt. 0000c.....	11
§ 60.22a(b)(5) .....	4, 11
§ 60.23a.....	4
§ 60.24a.....	4, 5
§ 60.27a.....	16, 19
§ 60.1570.....	11
§ 60.1575.....	11
§ 60.2996.....	11
§ 60.2997.....	11
§ 60.5361c(a).....	7
§ 60.5364c .....	12
§ 60.5371b.....	21
§ 60.5372c.....	12
§ 60.5376.....	12
§ 60.5465c .....	12

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<b>COURT RULES</b>	
S. Ct. R. 23.3 .....	20
<b>OTHER AUTHORITIES</b>	
42 Fed. Reg. 12,022 .....	5
60 Fed. Reg. 65,387 .....	5
81 Fed. Reg. 35,824 .....	6
88 Fed. Reg. 80,480 .....	19
89 Fed. Reg. 5,318 .....	37
89 Fed. Reg. 16,820 .....	6-8, 11-30, 33, 35-36
EPA-HQ-OAR-2021-0317-2330, Comment by Kentucky Division for Air Quality (Feb. 13, 2023), <a href="https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2330">https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2330</a> .....	19
EPA-HQ-OAR-2021-0317-3988, Background Technical Support Document (TSD) for the Final New Source Performance Standards (NSPS) and Emissions Guidelines (EG) (Nov. 25, 2023), <a href="https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-3988">https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-3988</a> .....	31
U.S. EPA, Letter to Hopkins and Kirchoff (May 6, 2024), <a href="https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx.-5.6.24-signed_1.pdf">https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx.-5.6.24-signed_1.pdf</a> .....	25, 27

## INTRODUCTION

Exercising its authority under Section 111 of the Clean Air Act, the Environmental Protection Agency promulgated a final rule setting limits for emissions of methane and volatile organic compounds from certain oil and gas sources. Methane is the main component of natural gas, and a potent greenhouse gas that contributes to near- and long-term climate warming, causing environmental, health, and other harms. The oil and gas sector is the largest industrial emitter of methane in the United States. In the Rule, EPA considered a range of technologies and best practices to monitor and minimize such emissions from producers of oil and natural gas; determined standards of performance to govern new sources of these emissions within the oil and gas industry; and issued emission guidelines for States to follow in regulating methane emissions from existing sources.

Applicants challenged aspects of the Rule in the D.C. Circuit and sought an administrative stay of the entire Rule pending resolution of their petitions for review. The court of appeals denied the stay on July 9, 2024. Six weeks later, applicants sought a stay from this Court.

This Court should deny the stay applications. Applicants are unlikely to succeed on their arguments that the Rule's presumptive standards (*i.e.*, model rules) for existing sources violate the cooperative federalism framework established in the Clean Air Act and that the two-year period for submitting

state plans is insufficient. The Rule follows the statutory framework by setting emission guidelines and allowing States to submit plans that meet (or exceed) those guidelines. Consistent with EPA's longstanding practice when issuing emission guidelines under Section 111(d), the Rule includes presumptive standards to assist States in developing their state plans, but it does not compel States to adopt any of those presumptive standards in their particular plans. The Rule's presumptive standards thus facilitate the Act's scheme of cooperative federalism by providing a blueprint from which States can borrow, as desired, in developing their own plans. Further, EPA acted reasonably in extending the time allowed for States to submit their plans from 18 months to two years, striking an appropriate balance between the time necessary to devise a state plan and the need to expeditiously mitigate health and environmental harms arising from methane emissions.

Applicants are also unlikely to succeed on their various other technical objections to the Rule. Most of those objections were not properly presented in the D.C. Circuit and are not properly before this Court. In any event, applicants' record-intensive arbitrary and capricious claims either misunderstand the Rule's requirements, ignore record-based findings and analysis that EPA provided in the Rule, or present challenges to aspects of the Rule that EPA is currently reconsidering.

Finally, applicants fail to demonstrate irreparable harm or that the equities weigh in their favor. Although state applicants contend that their sovereign interests would be injured if they were compelled to adopt presumptive standards, they admit that they are free to devise their own state plans, consistent with the Act. And in complaining that two years is insufficient to complete those plans, applicants conflate the resources needed for the state-planning process with those needed to eventually implement and enforce those standards. Applicants also ignore the fact that States are not required to submit a state plan at all, and that if a federal plan is imposed because a State fails to adopt a state plan by the two-year deadline, the State remains free to replace that federal plan with its own plan. The harms that industry applicants will allegedly suffer from the various provisions they challenge are illusory. By contrast, staying the challenged provisions of the Rule would irreparably harm the respondent-intervenor States, the public, and the Nation, by exacerbating ongoing harms to public health and the environment from unchecked emissions and injecting uncertainty into the state planning process.<sup>1</sup>

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<sup>1</sup> This brief is submitted on behalf of California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia, who are Intervenor-Respondents below (collectively, “State respondent-intervenors”).



## STATEMENT

### A. Statutory Background

Section 111 of the Clean Air Act requires EPA to limit emissions from any category of stationary sources that it determines causes or significantly contributes to dangerous air pollution. 42 U.S.C. § 7411(b)(1)(A). For new sources in the category, EPA determines standards of performance that “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.” *Id.* § 7411(a)(1). EPA then issues emission guidelines to control the same pollution from existing sources in the same category, including specifying the degree of emission limitation each source would achieve using the best system of emission reduction. *Id.* § 7411(d)(1); 40 C.F.R. § 60.22a(b)(5); *West Virginia v. EPA*, 597 U.S. 697, 709-710 (2022).<sup>2</sup> To regulate existing sources within its jurisdiction, each State can submit a plan to EPA explaining the emissions regulations it will adopt and enforce for those sources to meet the EPA’s emission guidelines. 42 U.S.C. § 7411(d)(1); 40

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<sup>2</sup> If the pollutant is regulated as a criteria pollutant under Section 108 of the Act (42 U.S.C. § 7408) or as a hazardous air pollutant under Section 112 (42 U.S.C. § 7412), then EPA may not issue emission guidelines for that pollutant under Section 111(d). 42 U.S.C. § 7411(d)(1).

C.F.R. §§ 60.23a, 60.24a. In the plan, the State may consider a source's remaining useful life and other factors in establishing a standard of performance. 42 U.S.C. § 7411(d)(1); 40 C.F.R. § 60.24a(e).

The Act directs EPA to assess whether a state plan is "satisfactory." 42 U.S.C. § 7411(d)(2)(A). Although States can impose emission limits that are stricter than EPA's guidelines, each plan must at a minimum adhere to EPA's limits or reasonably explain why a more lenient standard is necessary in light of source-specific considerations. *See West Virginia*, 597 U.S. at 710; 42 U.S.C. § 7411(d)(1); 40 C.F.R. §§ 60.24a(e), (i). If a State does not submit a plan or EPA finds the state plan unsatisfactory, EPA must promulgate a federal plan. *See* 42 U.S.C. § 7411(d)(2)(A). Accordingly, under Section 111(d), EPA has "the primary regulatory role" for existing sources: "[t]he Agency, not the States, decides the amount of pollution reduction that must ultimately be achieved." *West Virginia*, 597 U.S. at 710; *see* 42 U.S.C. § 7411(a)(1), (d)(1). EPA has long exercised its authority under Section 111(d) to set emission guidelines for air pollution from a variety of existing sources, ranging from phosphate fertilizer plants to municipal waste combustors.<sup>3</sup>

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<sup>3</sup> *See, e.g.*, Phosphate Fertilizer Plants, 42 Fed. Reg. 12,022 (Mar. 1, 1977); Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Municipal Waste Combustors, 60 Fed. Reg. 65,387 (Dec. 19, 1995).

## **B. The Challenged Rule**

Methane is a greenhouse gas that contributes to near- and long-term climate warming. *See* 15 U.S.C. § 2901 (note). In 2016, EPA introduced standards of performance for emissions of methane and volatile organic compounds at new oil and gas facilities. 81 Fed. Reg. 35,824 (June 3, 2016). That action triggered EPA’s obligation under Section 111(d) to issue emission guidelines for methane emissions from existing facilities. After several intervening years of administrative and congressional activity (*see* C.A. No. 24-1059, EPA Opp’n to Stay Mot. 3-5 (June 11, 2024)), EPA in March 2024 promulgated the final rule at issue here, which provides standards for new sources as well as emission guidelines for existing sources. *See* Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820 (Mar. 8, 2024) (“Rule”). The Rule took effect on May 7, 2024. *Id.*

In the Rule, EPA determined the “best system of emission reduction” for several subcategories of oil and gas sources that emit methane and volatile organic compounds, and it issued new source standards of performance that reflect the degree of emission limitation achievable through the application of that system. 89 Fed. Reg. at 16,823, 16,830-16,833. For new sources constructed, modified, or reconstructed after December 2022, those standards

range from leak monitoring and repair requirements, *id.* at 16,830, to requirements to route gas emissions from oil wells to a pipeline for sale or to a control device, such as a flare, under specified circumstances, *id.* at 16,832-16,833.

For existing sources, EPA determined the “degree of emission limitation achievable through the application of the best system of emission reduction” for several subcategories of oil and gas sources. 89 Fed. Reg. at 16,833-16,835; *see also* 42 U.S.C. § 7411(d). Those determinations pertained only to methane emissions. *Id.*; *see also* 40 C.F.R. § 60.5361c(a). The agency then translated those emission guidelines into a set of presumptive standards that States may use, but are not required to use, in developing their state plans. 89 Fed. Reg. at 16,999-17,000.<sup>4</sup> States may instead choose to submit a plan that includes different standards of performance that achieve or exceed the emission guidelines, unless the State can justify, based on certain source-specific considerations, a standard that achieves a lesser degree of emission limitation. *Id.* Alternatively, States may opt out of self-regulation entirely and allow EPA to directly regulate existing sources. *Id.* at 17,031. States have two years to

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<sup>4</sup> Some of these presumptive standards include numerical emission limitations at particular sources, like a 95% reduction in emissions at storage vessels; others include non-numerical design, equipment, work practice, or operational standards, such as regularly checking for leaks. *See, e.g.*, 89 Fed. Reg. at 16,993-16,994, 16,998; 42 U.S.C. §§ 7411(a)(1), (h).

submit plans (through March 2026), and existing oil and gas sources have another three years after plan submission (through March 2029) before they must begin complying with the provisions of those state plans. *Id.* at 17,009-17,011.

### **C. Procedural Background**

After EPA issued the Rule, several oil and gas producers, industry groups, and States filed petitions for review in the D.C. Circuit and sought an order staying implementation of the Rule pending resolution of those petitions. *See* Okla. Appl. i-iii.<sup>5</sup> The court of appeals consolidated the actions. On July 9, 2024, a three-judge panel (comprising Judges Katsas, Rao, and Childs) unanimously denied those motions on the ground that petitioners “ha[d] not satisfied the stringent requirements for a stay pending court review.” Okla. App’x 409a (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Applicants did not ask the D.C. Circuit to expedite consideration of their petitions for review. On August 23 and 26, 2024, more than six weeks after the court of appeals’ order, applicants submitted their requests to this Court seeking a stay of the Rule pending the adjudication of their petitions for review.

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<sup>5</sup> “Okla. Appl.” refers to the Application for Stay of Final Agency Action filed by state applicants in No. 24A213. “Okla. App’x” refers to the appendix filed in connection with that application. “Indus. Appl.” refers to the Application for Immediate Stay of Final Agency Action filed by industry applicants in No. 24A215.

## ARGUMENT

A stay pending review in the court of appeals is an “intrusion into the ordinary processes of administration and judicial review.” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotation marks omitted). This Court will grant such a stay “only in extraordinary circumstances,” *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (Stevens, J., in chambers) (quotation marks omitted), and “upon the weightiest considerations,” *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers) (quotation marks omitted); *see also, e.g., Murthy v. Missouri*, 144 S. Ct. 7, 8 (2023) (Alito, J., dissenting) (similar); *Louisiana v. Am. Rivers*, 142 S. Ct. 1347, 1348 (2022) (Kagan, J., dissenting) (similar). For such applications, the Court considers:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Nken*, 556 U.S. at 434 (quotation marks omitted); *see also Ohio v. EPA*, 144 S. Ct. 2040, 2052 (2024) (applying *Nken* factors in evaluating stay request). In this Court, an applicant must also show a reasonable probability that the Court will grant certiorari if the applicant seeks it at the appropriate time. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *see Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief) (first *Nken* factor incorporates inquiry into

reasonable probability of certiorari). It is “especially important” for this Court to hold an applicant for preliminary relief to its burdens in a case that will be resolved on record-intensive grounds. *Murthy v. Missouri*, 144 S. Ct. 1972, 1991 n.7 (2024); *see also Ohio*, 144 S. Ct. at 2058 (Barrett, J., dissenting) (cautioning against granting “emergency relief in a fact-intensive and highly technical case without fully engaging with both the relevant law and the voluminous record”). Applicants fail to carry that heavy burden.

#### **I. APPLICANTS ARE UNLIKELY TO SUCCEED ON THE MERITS**

To obtain a stay, applicants must make “a strong showing” that they are “likely to succeed on the merits.” *Nken*, 556 U.S. at 434 (quotation marks omitted). State applicants contend that the Rule is deficient in two principal respects: that the presumptive standards concerning existing sources violate Section 111(d)’s cooperative federalism framework and that the Rule’s two-year deadline for the submission of state plans is irrational. *See Okla. Appl. 15-25*. Industry applicants also challenge the presumptive standards on cooperative federalism grounds. *See Indus. Appl. 11-15*. The industry applicants mount a similar challenge to the Rule’s “super-emitter” program, and raise several technical challenges to the Rule’s new source performance standards. *See id.* at 15-33. None of these arguments has merit.

**A. The Presumptive Standards for Existing Sources Do Not Violate Section 111(d)**

Applicants contend that the Rule's presumptive standards for existing sources violate principles of cooperative federalism reflected in Section 111(d). Okla. Appl. 15-20; Indus. Appl. 11-15. Applicants misunderstand both the Act's structure and the Rule's provisions. Under the cooperative federalism framework set out in Section 111(d), EPA "retains the primary regulatory role" and "decides the amount of pollution reduction that must ultimately be achieved." *West Virginia*, 597 U.S. at 710; *see also* 42 U.S.C. § 7411(d), (a)(1); *supra* pp. 4-5. States have flexibility in achieving reductions equivalent to (or greater than) EPA's emission guidelines when regulating existing sources in their jurisdictions, and may justify a standard that achieves a lesser degree of emission limitation based on certain source-specific considerations. *Supra* p. 5.

The Rule follows that framework. *See* 89 Fed. Reg. at 16,999-17,000; *see also* 40 C.F.R. § 60.22a(b)(5). It sets emission guidelines for several categories of existing oil and gas sources. 89 Fed. Reg. at 16,833-16,835; *see also* 40 C.F.R. part 60, subpart OOOOc. It then translates the emission guidelines into presumptive standards that meet those limits. *See id.* The presumptive standards have a "function similar to that of a model rule," 89 Fed. Reg. at 16,829, which EPA has provided in emission guidelines for decades, *see, e.g.*, 40 C.F.R. §§ 60.1570, 60.1575, 60.2996-.2997 (model rules governing emissions



from steam generators and other plants adopted in 1971). EPA set forth those presumptive standards “to assist states in developing their plan submissions,” 89 Fed. Reg. at 16,829, and to “assist[] EPA when judging the adequacy of such plans,” *id.* at 16,995.

But States are not required to adopt those presumptive standards. *See* 89 Fed. Reg. at 16,996-17,006; *see also* 40 C.F.R. § 60.5376. They may instead choose to adopt different standards of performance tailored to States’ specific needs so long as those standards meet or exceed the degree of emission limitation that would be achieved using the presumptive standards, or achieve a lesser degree of emission limitation based on source-specific considerations. 89 Fed. Reg. at 16,996-17,000; 40 C.F.R. §§ 60.5364c, 60.5465c.<sup>6</sup> Far from a “one-size-fits-all” approach (Indus. Appl. 12), the Rule’s use of presumptive standards provides a template for obtaining EPA approval from which States can borrow or not, as best suits each State’s needs. In this way, the Rule promotes the Act’s cooperative federalism scheme. Applicants thus are wrong that the Rule “forc[es]” its presumptive standards “upon the States” and “supplants” their “authority to develop standards.” Okla. Appl. 16-17; *see also* Indus. Appl. 1-2, 12-15 (similar).

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<sup>6</sup> States may also choose to opt out of self-regulation entirely and allow EPA to directly regulate existing sources. *See* 42 U.S.C. § 7411(d)(2); 40 C.F.R. § 60.5372c.

Applicants complain that the Rule “lists specific technologies and methods” in the presumptive standards and argue that the identification of such technologies means that States are required to adopt them. Okla. Appl. 10, 17; Indus. Appl. 13. Applicants ignore that Section 111(h) of the Act allows EPA to identify specific technology-based “equipment” or “work practice” standards that reflect the best system of emission reduction when it is not feasible to prescribe or enforce a numerical standard of performance. 42 U.S.C. § 7411(h); *see* 89 Fed. Reg. at 16,993-16,994 (listing presumptive non-numerical standards for existing sources promulgated under Section 111(h)); *supra* n.4. Consistent with that authority, the Rule merely identifies particular equipment or methods that the Agency has concluded are likely to meet emission guidelines; it does not require States to incorporate any particular equipment or methods into their plans. To the contrary, the Rule explains that States retain the authority to use alternative technologies and different approaches to meet emission guidelines. *See, e.g.*, 89 Fed. Reg. at 17,005-17,006 (recognizing state plans may include standards that differ from the presumptive standards); *id.* at 17,000-17,001 (identifying process for demonstrating technology equivalency); *id.* at 16,998-16,999 (acknowledging States can demonstrate “qualitative” equivalency to non-numerical guidelines, such as monitoring and work practice standards).

Applicants eventually admit that the Rule authorizes States to “develop their own standards of performance under Section 111(d)[,] rather than simply adopt EPA’s ‘presumptive standards.’” Okla. Appl. 21. But they emphasize that any departure from the presumptive standards will be “*thoroughly reviewed by the EPA*,” *id.* at 19, and contend that requiring “equivalency” with the presumptive standards is “extra-statutory,” “unlawfully ratchet[ing] up EPA’s scrutiny of state plans,” *id.* at 11, 17; *see also* Indus. Appl. 13. What the Rule says, however, is that state plans are not “presumptively approvable” if they depart from the presumptive standards in whole or in part. 89 Fed. Reg. at 17,006. Under the Act, EPA must “decide[] the amount of pollution reduction that must ultimately be achieved,” *West Virginia*, 597 U.S. at 710, and whether a State’s submission is “satisfactory” in meeting “the degree of emission limitation achievable through the application of the best system of emission reductions,” 42 U.S.C. §§ 7411(a)(1), (d)(2)(A). That determination is “carried out via rulemaking,” and as EPA explained in the Rule, “[i]nclusion of presumptive standards” does not “predetermine the outcomes of any future rulemaking on state plan submittals.” 89 Fed. Reg. at 16,829. Instead, use of the Rule’s presumptive standards merely provides a means for obtaining expedited agency approval; plans that propose alternatives to these standards are reviewed in the normal course. Ultimately, EPA’s decision to approve or disapprove a state plan is not based on “consistency with the ‘presumptive

standards,” Okla. Appl. 18, but rather on whether the plan is “satisfactory”—*i.e.*, whether the plan achieves or exceeds the level of reduction called for in EPA’s emission guidelines, or reasonably explains why a more lenient standard is necessary given source-specific circumstances. 89 Fed. Reg. at 16,848; *see also* 42 U.S.C. §§ 7411(d)(1), (2)(A). If EPA disapproves a plan that a State believes meets the emission guidelines, the State may seek judicial review. 42 U.S.C. § 7607(b)(1).

**B. The Two-Year Deadline to Submit State Plans for Existing Sources Is Reasonable and Reasonably Explained**

In the notice of rulemaking, EPA initially proposed an 18-month deadline for States to adopt and submit a plan to regulate methane emissions from existing sources. 89 Fed. Reg. at 17,008-17,009. Several commenters expressed that the timeframe was too short to finalize a state plan. *Id.* at 17,009. They pointed to the “volume of sources,” requirements imposed by state law, and limited regulatory experience as potential impediments to an 18-month timeframe, and they recommended “upwards of 3 years to complete state plan development.” *Id.* Other commenters proposed a “minimum 24-month timeline.” *Id.* Still others expressed that “18 months is too long.” *Id.* Those commenters expressed the achievability of a 15-month period and pointed to the “urgent nature of climate change” as a reason to impose a more rapid deadline. *Id.*

In response to the comments, EPA extended the deadline to submit state plans to 24 months. 89 Fed. Reg. at 17,009-17,010. It also offered States the flexibility to meet the deadline with the option of partial-, conditional-, and parallel-processing approvals and the opportunity to leverage existing state programs to expedite state planning. *See* 89 Fed. Reg. at 16,996, 16,999-17,000, 17,002, 17,013; 40 C.F.R. § 60.27a.<sup>7</sup> EPA found “compelling reasons” to extend the deadline and offer those accommodations, in part because some States would be “undertaking [the regulatory requirements] for the first time” and because some plans would cover facilities that are “geographically spread out covering multiple industry segments.” 89 Fed. Reg. at 17,010 But based in part on EPA’s previous experience with more complex state implementation plans (SIPs) submitted on a three-year deadline under Section 110, it viewed 24 months as sufficient to account for States’ concerns and to “complete state administrative processes, conduct public hearings, engage with pertinent stakeholders, and meet all other applicable requirements.” *Id.*<sup>8</sup> In EPA’s

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<sup>7</sup> *See also* C.A. No. 24-1059, State Respondent-Intervenors Opp’n to Mot. To Stay, attach. 3 (Lozo Decl. ¶¶ 19, 21) (May 6, 2024); *id.*, attach. 4 (Ogletree Decl. ¶¶ 7, 9-10).

<sup>8</sup> States typically have three years to submit SIPs, which are required under the National Ambient Air Quality Standards program set out in Section 110 of the Clean Air Act. 42 U.S.C. § 7410(a)(1). SIPs can apply to any category of sources, and often require complex atmospheric modeling to understand the  
(continued...)

judgment, the 24-month deadline would “strike[] an appropriate balance . . . between the state’s need for time” and EPA’s statutory obligation to ensure the reduction of harmful emissions. *Id.*

The two-year deadline is both “reasonable and reasonably explained.” *Ohio*, 144 S. Ct. at 2053. Given the justification expressly articulated in the Rule, applicants’ assertion that EPA “offered ‘no reasoned response’” to their deadline-related concerns is plainly incorrect. Okla. Appl. 25; *supra* pp. 16-17. For example, applicants contend that EPA failed to consider that the process of “collect[ing] an emission inventory” for existing sources would be “overly time-consuming.” *Id.* at 22. EPA directly addressed that concern, however, by eliminating any emissions inventory requirement, explaining that “due to the very large number of existing oil and natural gas sources,” it would not be “practical to require states to compile this information.” 89 Fed. Reg. at 17,006; *see id.* (“state plans are not required to include an inventory and emissions data”). Applicants also accuse EPA of sidestepping their concern that many States would be “regulating for the first time” a large volume of “diverse oil and gas facilities.” Okla. Appl. at 21; *see also id.* at 23 (claiming that EPA considered only “state-administrative-timing concerns”). But EPA explained

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effect of different precursory pollutants and a wide variety of sources on pollutant levels in the atmosphere. *See* C.A. No. 24-1059, State Respondent-Intervenors Opp’n to Mot. To Stay, attach. 3 (Lozo Decl. ¶ 19) (May 6, 2024). Section 111 state plans, by contrast, are “more straightforward.” *Id.* ¶¶ 19, 20.

that it had *credited* those concerns, directly addressing them by extending the deadline from 18 to 24 months and offering other submission-related accommodations. *See* 89 Fed. Reg. at 17,009 (discussing “volume of sources”); *id.* at 17,010 (acknowledging “designated facilities” that are “geographically spread out covering multiple industry segments”); *id.* (recognizing that “states may be undertaking” certain requirements “for the first time”); *id.* (finding “compelling reasons” to extend deadline); *supra* pp. 16-17.

That EPA declined to extend the deadline further does not reflect that it ignored applicants’ “fundamental concern[s].” Okla. Appl. 23. EPA acknowledged that some commenters preferred “upwards of 3 years” to submit state plans. 89 Fed. Reg. at 17,009. The agency also acknowledged that some of the requisite analysis could be “time consuming.” 89 Fed. Reg. at 17,010; *see* Okla. Appl. 23. But based on the agency’s substantial experience with more complicated state plan requirements, *supra* n.8, EPA explained that an overlong deadline could allow States to unduly delay the adoption of a plan and to implement “procedures that are longer than necessary” to complete a state plan. *Id.* at 17,010. Importantly, EPA also explained that allowing methane emissions to remain unregulated would present serious health and climate risks. *Id.*

In light of those considerations, EPA’s judgment that a two-year deadline “strikes an appropriate balance,” 89 Fed. Reg. at 17,010, is hardly

“implausible,” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Indeed, some of the state officials charged with submitting applicants’ own plans agreed during the comment period that a two-year deadline would be adequate.<sup>9</sup> And the Rule imposes no sanctions if a State is unable to meet the deadline. *See* 42 U.S.C. § 7411(d); 40 C.F.R. § 60.27a(c)(1); Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d), 88 Fed. Reg. 80,480, 80,493 (Nov. 17, 2023). The failure to submit a state plan would trigger EPA’s obligation to promulgate a federal plan for the State within a year. 42 U.S.C. § 7411(d). But “EPA would not be required to promulgate the Federal plan if the state corrects the deficiency giving rise to the EPA’s duty and the EPA approves the state’s plan before promulgating the Federal plan.” 89 Fed. Reg. at 17,013. And a State may submit a replacement plan even after a federal plan has been adopted. 88 Fed. Reg. at 80,495.

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<sup>9</sup> *See* EPA-HQ-OAR-2021-0317-2330, Comment by Kentucky Division for Air Quality at 2 (Feb. 13, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2330> (commenting that EPA should “extend[] the deadline for state plan submissions to a minimum of 24 months after a final emission guideline is published.”); C.A. No. 24-1054, Okla. Mot. To Stay, Ex. 13 (Hodanbosi Decl. ¶ 7) (Apr. 3, 2024) (describing proposed schedule for Ohio to submit a state plan to EPA within 18 months).



**C. Industry Applicants' Challenge to the Super Emitter Program and Technical Objections to the New Source Standards of Performance Lack Merit**

Industry applicants challenge the Super Emitter Program and raise various technical objections to several aspects of the new source standards. Indus. Appl. 15-33. Most of those arguments (*id.* at 17-31) were not properly presented to the court of appeals and are therefore not properly before this Court. *See* S. Ct. R. 23.3; C.A. No. 24-1054, EPA Reply Addressing Continental's Response 1-2 (May 17, 2024). In any event, the arguments are unpersuasive and provide no basis for a stay. *See Ohio*, 144 S. Ct. at 2070 (Barrett, J., dissenting) ("we should proceed all the more cautiously in cases like this one with voluminous, technical records").

**1. Super Emitter Program**

The Rule's Super Emitter Program does not exceed EPA's authority under Section 114 of the Act. Industry applicants contend that the Super Emitter Program "deputize[s] non-governmental third parties to enforce the Final Rule." Indus. Appl. 15. It does not. The Super Emitter Program establishes a process for entities certified by EPA, using technologies and processes approved by EPA, to inform the Agency of certain events involving significant emissions of methane (*i.e.*, a rate of at least 100 kilograms/hour). *See* 89 Fed.

Reg at 16,876-16,881.<sup>10</sup> That information-gathering program is consistent with EPA’s authority under Section 114(a) to review data from “any person” and to require owners and operators to investigate and report sources of emissions. *Id.* at 16,877-16,878; *see also* 42 U.S.C. § 7414(a)(1) (authorizing EPA to obtain information from several categories of sources, including “any person . . . who the Administrator believes may have information necessary for purposes of” implementing the Clean Air Act). It is also consistent with other longstanding EPA programs, under which “citizens and other entities can report concerns about regulatory compliance.” 89 Fed. Reg. at 16,917. It remains EPA’s obligation under the Act to verify data, notify operators, receive operator reports, and otherwise enforce the Act. *Id.* at 16,877.<sup>11</sup>

## **2. Best System of Emission Reduction for Associated Gas**

Section 111 directs EPA to identify the best system of emission reduction that “the Administrator determines has been adequately demonstrated,” “taking into account the cost of achieving such reduction.” 42 U.S.C.

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<sup>10</sup> The Program also requires owners and operators of emissions sources to investigate and report information about certain emissions events to EPA. *See* 40 C.F.R. §§ 60.5371b(d)-(e); 42 U.S.C. § 7414(a)(1).

<sup>11</sup> Industry applicants raise concerns about potential reputational harm from errant third-party reporting. *Indus. Appl.* 16-17, 35-36. But EPA independently reviews notifications of significant emissions and provides “an opportunity to respond before the super-emitter event is publicly attributed to a particular owner/operator.” 89 Fed. Reg. at 16,880.

§ 7411(a)(1). A system is “adequately demonstrated” if it “has been shown to be reasonably reliable” and “reasonably efficient.” *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974). Industry applicants contend that the best system of emission reduction for associated gas is arbitrary and capricious under that standard on several grounds. Indus. Appl. 17, 19, 23, 25. They argue that EPA failed to consider the cost of routing associated gas; failed to demonstrate that routing gas is generally achievable; and adopted an infeasibility exception that is “unduly vague.” *Id.* at 17-26. Applicants are unlikely to succeed on any of those record-intensive objections.

“Associated gas” is the natural gas, made up primarily of methane, that is released directly into the air during a particular phase of the oil-production process. 89 Fed. Reg. at 17,129. Although some wells have historically disposed of associated gas through routine flaring, “standard business operations for thousands of wells” has evolved to “recovering associated gas” and routing it to a flow line or collection system for commercial sale. *Id.* at 16,942; *see id.* at 16,943 (noting that 54 oil companies pledged to eliminate routine flaring by 2030 and that ExxonMobil had committed to end routine flaring). For new sources, the Rule establishes that the best system of emission reduction for associated gas is routing the associated gas to a sales line. *Id.* at 16,832-16,833, 16,886.

The Rule provides “an orderly ‘phase in’” of the new source requirements for several subcategories of wells. 89 Fed. Reg. at 16,943. For wells constructed after May 2026, the Rule requires associated gas to be: routed to a sales line; “used for another useful purpose that a purchased fuel, chemical feedstock or raw material would serve”; or recovered and reinjected into the well or another well. *Id.* at 16,832. EPA explained that the 24-month phase-in period would allow new sources “to plan for managing the associated gas when construction [is] beginning” and build the lines necessary to route associated gas or comply with the alternative options. *Id.* at 16,944; *see also id.* at 16,942 (“operators of newly drilled wells have the flexibility to plan and coordinate the construction of gas gathering systems”); *id.* at 16,943 (observing that the regulatory alternatives were “consistent with the options allowed in New Mexico and Colorado”).

For other new sources (including wells that are reconstructed or modified after December 6, 2022), the performance standards include an additional option: wells may route associated gas to “a flare or other control device that achieves at least 95 percent reduction” in methane and volatile organic compounds emissions under specified conditions, if the well can demonstrate that “routing to a sales line and the alternatives are not technically feasible.” 89 Fed. Reg. at 16,832-16,833. The Rule explains that these wells “may be limited in the options to route to a sales line or comply with one of the other

options,” supporting the existence of a flaring option if the alternatives are technically infeasible. *Id.* at 16,944.

Industry applicants argue that EPA “simply assume[d], without any data or analysis, that there are no cost impacts” of routing associated gas. Indus. Appl. 21. The Rule flatly contradicts that claim. In a section of the Rule titled “BSEER Cost Analysis,” EPA estimated “the costs for connecting the associated gas from a well site to a nearby gathering system/sales line.” 89 Fed. Reg. at 16,941-16,942; *see also id.* at 16,946 (considering costs for certain recently reconstructed or modified wells). Based on “detailed cost information” submitted during the comment period, including a study commissioned by an industry organization, EPA estimated the costs and savings of routing associated gas, *id.* at 16,941; concluded that “the cost of routing to sales is reasonable,” *id.* at 16,943; and noted that it had incorporated considerations of “costs when setting the standard,” *id.* at 16,951.

And while industry applicants also assert that EPA failed to “consider costs of alternative control technologies, such as enclosed combustion devices, thermal oxidizers, catalytic incinerators, and deep well injection” (Indus. Appl. 23), EPA was under no obligation to individually assess the precise costs of any of those alternatives. *See* 42 U.S.C. § 7411(a)(1) (Administrator is to account for “cost” of “best system of emission reduction”). Regardless, the Agency

considered such costs in authorizing those alternative control options. 89 Fed. Reg. at 16,940-16,943.

Industry applicants also speculate (Indus. Appl. 22-24) that some subset of well operators would be denied access to existing sales lines by “midstream companies,” making routing not “achievable.” EPA explained that “[w]here distances or logistics might make connection to sales lines less attractive,” both “cost and qualitative” considerations would support the “likely . . . use[]” of the “other alternatives.” 89 Fed. Reg. at 16,944. In circumstances where wells subject to the new source standards are “limited in the options to route to a sales line or comply with one of the other options,” the Rule includes “special allowances” for routine flaring under specified circumstances of technical infeasibility. *Id.*<sup>12</sup>

Industry applicants argue that the technical infeasibility exception itself is arbitrary and capricious because the “useful purpose” alternative is “unbounded” and “vague.” Indus. Appl. 25-26. But the Rule specifically

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<sup>12</sup> Industry applicants are thus wrong that the Rule “effectively prohibits flaring.” Indus. Appl. 18. And, as industry applicants acknowledge (Indus. App. 25), the Rule also authorizes temporary flaring in circumstances when it is infeasible or unsafe to capture associated gas. 89 Fed. Reg. at 16,994 (“the final rule allows temporarily routing to a flare or other control device in specified situations”). Additionally, EPA recently “grant[ed] reconsideration” for “temporary flaring provisions for associated gas in certain situations.” U.S. EPA, Letter to Hopkins and Kirchoff (May 6, 2024), [https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx.-5.6.24-signed\\_1.pdf](https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx.-5.6.24-signed_1.pdf).

describes what sorts of useful purposes are covered. 89 Fed. Reg. at 16,887-16,888. Operators in New Mexico and Colorado have been able to comply with state methane emission regulations that include alternatives “consistent” with the alternatives identified in the Rule, allowing “other” uses such as power generation or liquids removal. *Id.* at 16,943. That experience undermines industry applicants’ claim that the “useful purposes” alternative “gives no clarity to operators.” *Indus. Appl.* 26. More broadly, that reality undermines industry applicants’ assertions about a greater need for flaring. *Id.* at 18. Colorado and New Mexico have even stricter venting and flaring requirements than the Rule, with both States prohibiting routine flaring and venting. C.A. No. 24-1054, State Respondent-Intervenors Opp’n to Mot. To Stay, Ex. A (Comment of States and Cities at 14-15) (June 11, 2024); *id.*, Ex. B (Comment of Colorado Local Government Coalition at 6-13); *see also id.*, Ex. C (Miano Decl. ¶ 8). Yet, with some of these regulations in place for years, these States continue to be among the top oil and gas producers in the nation. *See, e.g., id.*, Ex. C (Miano Decl. ¶ 5.).

### **3. Net Heating Value Monitoring Requirements**

Industry applicants challenge (*Indus. Appl.* 26-29) certain monitoring requirements for operators that use combustion-based control devices to meet the 95 percent emission reduction standard. *See* 89 Fed. Reg. at 16,894. For certain “enclosed combustion devices and flares,” the Rule provides that an

operator must “maintain the net heating value (NHV) of the gas sent to the device above a minimum amount.” *Id.* The net heating value provides evidence that a combustion device is operating efficiently, and an operator may demonstrate that the device meets the net heating value minimums through certain specified sampling methods. *Id.* at 17,105-17,106. An operator may also use an “alternative test method” to demonstrate “that the combustion device continuously achieves 95.0 percent combustion efficiency.” *Id.* at 16,894.

But as industry applicants acknowledge (Indus. Appl. 28 n.6), EPA granted reconsideration of the net heating value monitoring and sampling requirements on May 6, 2024. *See* U.S. EPA, Letter to Hopkins and Kirchoff (May 6, 2024), [https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx.-5.6.24-signed\\_1.pdf](https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx.-5.6.24-signed_1.pdf). The Agency noted that it intended to “issue a *Federal Register* notice initiating public review and comment on these issues.” *Id.* In light of that development, the D.C. Circuit recently severed the challenge to the net heating value monitoring and sampling requirements, assigned it a separate docket number, and held the matter in abeyance pending



administrative reconsideration.<sup>13</sup> Given this posture, there is no basis for this Court’s consideration of the issues at this time.<sup>14</sup>

#### 4. Enforceable Limits

The Rule requires a 95 percent reduction in emissions for storage vessels that emit more than a threshold quantity of methane or volatile organic compounds. 89 Fed. Reg. at 16,973-16,984. In determining whether a storage vessel is subject to the emissions requirements, operators had historically pointed to state or local permitting requirements (such as laws requiring a reduction of emissions by 95 percent) to claim that their storage vessels did not emit more than the threshold quantity of emissions. *Id.* at 16,974. Based on EPA’s historical experience with enforcement actions, however, EPA concluded in the Rule that the permits or their requirements were often not “legally and practicably enforceable,” meaning that the requirements did not bring emissions down below the regulatory threshold. *Id.* That allowed operators of storage vessels to evade federal emissions requirements by pointing to state permitting requirements that did not “actually limit and maintain potential

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<sup>13</sup> C.A. No. 24-1054, Order 2 (Sept. 4, 2024).

<sup>14</sup> Industry applicants argue that they need relief based on compliance testing obligations due by November 2024, which they now contend they will need “400 days” to complete. Indus. Appl. 29. But they represented to the D.C. Circuit that they would require “at least 79 days to conduct the required sampling,” C.A. No. 24-1054, Cont. Resp. 16 (May 6, 2024)—and as of this filing, it has been 136 days since the Rule took effect.

emissions below the rule’s applicability thresholds.” *Id.* The Rule addressed EPA’s concern by setting criteria before an operator may rely on “legally and practicably enforceable limit[s]” to claim that their vessels fall below the regulatory threshold. *Id.* at 17,045.

Industry applicants argue that the Rule’s criteria will “generat[e] *zero* emissions benefits” because operators of storage vessels are generally subject to state “permitting schemes requiring 95%+ emissions controls.” *Indus. Appl.* 30. That ignores EPA’s experience with some permitting requirements that did not operate to “actually limit” emissions. 89 Fed. Reg. at 16,974. Industry applicants further object that they will be required to comply with “onerous” emissions requirements because they cannot know if a State’s regulations meet the Rule’s criteria. *Indus. Appl.* 30. But EPA explained that it did not apply the criteria “retroactively” to “permit limits or other requirements that owners and operators had previously relied upon.” 89 Fed. Reg. at 16,977. And for new storage vessels, EPA observed that owners or operators “were on notice of the EPA’s proposed . . . criteria when obtaining” legally and practicably enforceable limits to cap potential emissions and all owners may seek to “reopen[]” existing permits to incorporate the new criteria. *Id.*

##### **5. Fugitive Emissions Monitoring Requirements**

Finally, industry applicants argue that EPA acted arbitrarily by imposing technological monitoring requirements, like optical gas imaging, for fugitive

emissions at marginal wells. *Indus. Appl.* 31. In particular, they fault EPA for basing its fugitive emissions monitoring requirements on a well site's equipment count. *Id.* at 31-32.

EPA “articulate[d] a satisfactory explanation” for its decision to base the rigor of its fugitive emissions monitoring requirements on a well site's equipment count. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43. EPA undertook a detailed analysis of the available data and found that “the frequency and magnitude of emissions from well sites are more strongly correlated with equipment counts than with production rates.” 89 Fed. Reg. at 16,906; *accord id.* at 16,990 n.661. That finding aligns with the common-sense insight that well sites with more pieces of potentially leaky equipment are generally more prone to leaks than sites with fewer pieces of equipment. *Id.* at 16,871. EPA also opted to require more rigorous emissions monitoring—in the form of leak-detection technology, rather than just audio-visual-olfactory inspections—at sites with relatively more equipment. *Id.* at 16,904-16,905. And the Rule includes numerous flexibilities to accommodate a range of wellsite conditions that could affect marginal wells. *See id.* at 16,830 (tailoring requirements to equipment counts, presence of processing equipment, and geographic location).

Industry applicants argue that the Rule's fugitive emissions monitoring requirements are not “achievable” for marginal wells. *Indus. Appl.* 32.

“An achievable standard is one which is within the realm of the adequately demonstrated system’s efficiency and which, while not at a level that is purely theoretical or experimental, need not be routinely achieved within the industry prior to its adoption.” *Essex Chem. Corp.*, 486 F.2d at 433-434. Industry applicants do not contend that the Rule’s requirements are unachievable within the meaning of the statute, only that the costs may be “prohibitive” for a subset of marginal well owners. *Indus. Appl.* 32. But the available data indicate that most marginal wells will be subject to EPA’s least stringent inspection requirements, which cost less than \$660 annually—far less than the average annual net profits of \$42,033 for marginal oil wells and \$5,648 for marginal gas wells. *See* EPA-HQ-OAR-2021-0317-3988, Background Technical Support Document (TSD) for the Final New Source Performance Standards (NSPS) and Emissions Guidelines (EG) at 6-8 & 6-9, table 6-4 (Nov. 25, 2023), <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-3988>.

Moreover, EPA had ample evidence before it that the Rule’s requirements for marginal wells are achievable despite their additional expense: the oil and gas industry has been meeting similar—and sometimes more stringent—state regulatory requirements for years. For over a decade, California, Colorado, and New Mexico have had fugitive emissions requirements that mandate the use of approved surveying instruments. *See* C.A. No. 24-1054, State

Respondent-Intervenors Opp'n to Mot. To Stay, Ex. A (Comment of States and Cities at 6-7) (June 11, 2024); *id.*, Ex. B (Comment of Colorado Local Government Coalition at 17). None of those States provides exemptions for marginal wells. *Id.*, Ex. A. (Comment of States and Cities at 6-7, 14-15); *id.*, Ex. B (Comment of Colorado Local Government Coalition at 6-7, 9-13, 17); *see also id.*, Ex. C (Miano Decl. ¶ 8-9). Yet they have remained among the top oil and gas producers in the Nation. *Id.*, Ex. C (Miano Decl. ¶¶ 5, 6, 11, 13).

## II. APPLICANTS HAVE NOT SATISFIED THE OTHER CRITERIA FOR OBTAINING A STAY

In addition to a “strong showing” of likely success on the merits, stay applicants must establish that they “will be irreparably injured absent a stay” and that the balance of equities and “the public interest” favor issuance of a stay. *Nken*, 556 U.S. at 434 (describing irreparable harm showing as “critical”) (quotation marks omitted). Applicants cannot meet those elements, and the applications may be denied on the failure to show irreparable harm alone. *See, e.g., Labrador v. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring) (“If the moving party has not demonstrated irreparable harm, then this Court can avoid delving into the merits.”); *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1301 (2014) (Roberts, C.J., in chambers) (denying stay for lack of irreparable harm even though there was “reasonable probability” of granting certiorari and “fair prospect” of reversal).

State applicants' claims of sovereignty-related harms broadly duplicate their (incorrect) merits arguments. Okla. Appl. 25-26. Neither the presumptive standards nor the two-year deadline harms state applicants' "sovereign interests." *Id.* at 26. The Rule affords States flexibility to choose how to achieve methane reductions from existing sources. *Supra* pp. 7, 11-15. And EPA's reasonably explained decision to provide States with two years to submit their plans was a reasonable effort to balance the regulatory burden on States with the need to mitigate climate change and protect human health. *Supra* pp. 15-19. If a State cannot immediately comply with the two-year deadline and EPA implements a federal plan, the Rule allows States to devise their own plans to replace a federal plan at a later time. *See supra* p. 19.

State applicants' arguments about economic harm (Okla. Appl. 27-30) fare no better. They focus on purported requirements (*e.g.*, "an inventory of all designated facilities," Okla. Appl. 28) that do not exist, *supra* p. 17, and conflate the resources necessary for the state planning process with resources needed to implement and enforce state regulations after they take effect, Okla. Appl. 29-30 (describing costs of increasing "permitting and compliance staff" and "implement[ing] permit programs"). And because existing sources are not required to comply with the Rule's emission guidelines until 2029, long after the D.C. Circuit will have rendered its decision on the merits, state applicants' costs for enforcement and permitting are not imminent. *See* 89 Fed. Reg. at

17,012 (“When the compliance timeline of 36 months is considered in conjunction with the state plan submittal deadline of 24 months, that means that sources could have up to 5 years between when the [emission guidelines] are final and when they are required to fully comply with the applicable standards of performance.”).

Moreover, if merely being required to develop a state plan or consider other compliance options would always constitute irreparable harm to a State’s sovereignty (*see* Okla. Appl. 25-28), most rules under the Clean Air Act (or other similar cooperative-federalism statutes) could satisfy that part of the test for a stay. That would subvert the principle that a stay is an “extraordinary remedy” that is not a “matter of right.” *Nken*, 556 U.S. at 428, 433 (quotation marks omitted); *see also Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 115 (2d Cir. 2005) (“ordinary compliance costs are typically insufficient to constitute irreparable harm”).

Industry applicants likewise fail to demonstrate that they will suffer irreparable harm absent a stay. They too emphasize the costs of complying with the Rule’s presumptive standards (Indus. Appl. 33), even though a State may deviate from those standards—and full compliance is up to five years away, *see supra* pp. 5, 7-8, 12-15. As to the asserted operational harms (Indus. Appl. 34-35), they are largely relevant only to a subset of sources that were reconstructed or modified after December 2022, and did not have the “benefit

of planning to accommodate each option best suited to the site.” 89 Fed. Reg. at 16,944; *see also supra* pp. 21-26 (addressing associated gas arguments); 29-32 (addressing fugitive gas arguments). The claimed operational harms are also illusory. *See supra* pp. 28 (net heating value monitoring requirements are being reconsidered); 28-29 (legally and practicably enforceable limits may be incorporated into new and existing permits). Nor will industry applicants suffer any immediate or irreparable harm from the Super Emitter Program, which is consistent with EPA’s authority under the Act, does not subject operators to risk of reputational harm from errant third-party reporting, and does not impose any unreasonable administrative burden. *See supra* pp. 20-21; *see also* 89 Fed. Reg. at 16,877, 16,879-16,880, 16,916-16,917 (discussing EPA’s oversight of notifications from certified third parties and Program’s safeguards against error).

Lastly, applicants did not ask the D.C. Circuit “to expedite consideration of” their petitions for review. *Yeshiva Univ v. YU Pride All.*, 143 S. Ct. 1, 1 (2022). And they waited more than six weeks after the D.C. Circuit issued its stay order to file their applications.

Applicants also have failed to show that the balance of equities and the public interest favor issuance of a stay. *See generally Nken*, 566 U.S. at 435 (factors “merge” when “the Government is the opposing party”). On the



contrary, any delay to the Rule’s deadlines to limit methane emissions would harm the public interest and State respondent-intervenors.

Methane is a “highly potent” pollutant responsible for near-term climate warming. 89 Fed. Reg. at 16,823. And the oil and gas sector is the largest industrial emitter of methane in the United States. *Id.* State respondent-intervenors, along with communities across the country, have suffered from climate impacts such as severe drought, wildfires and smoke, coastal and inland flooding, storm surges, insect outbreaks, and sea-level rise that are caused by emissions of greenhouse gases, including methane. *Id.* at 16,836-16,838; *see* C.A. No. 24-1059, State Respondent-Intervenors Opp’n to Mot. To Stay, attach. 5 (Soleau Decl. ¶¶ 17-25) (May 6, 2024); *id.*, attach. 2 (Fleishman Decl. ¶¶ 17-26); *id.*, attach. 1 (Chamberlin Decl. ¶¶ 6-15). If the Rule is stayed and methane emissions continue unabated (or increase), those harms will only worsen. *See id.*, attach. 1 (Chamberlain Decl. ¶ 15); *id.*, attach. 5 (Soleau Decl. ¶ 7). A stay would also delay the significant health and environmental benefits that will result from the Rule’s reduction in volatile organic compounds, which contribute to worsened air quality. *See* 89 Fed. Reg. at 16,836, 16,841.

Finally, a stay of the Rule would create regulatory uncertainty, harming both regulators—including respondent-intervenor States—and regulated entities. For example, state planners in respondent-intervenor States and elsewhere would face more difficulty moving state plans forward. They might

have to push compliance planning beyond the planning period for state-level rulemakings and move forward with state regulatory development without the benefit of EPA regulatory decisions regarding state plans. *See* C.A. No. 24-1059, State Respondent-Intervenors Opp'n to Mot. To Stay, attach. 3 (Lozo Decl. ¶¶ 24-26) (May 6, 2024). That uncertainty would trickle down to certain oil and gas facilities, which would not know whether they are exempt from a forthcoming waste emissions charge on excessive methane emissions, because exemption determinations can be made only after all Section 111(d) plans have been approved and put into effect. *See* 42 U.S.C. §§ 7436(e), (g); Waste Emissions Charge for Petroleum and Natural Gas Systems, 89 Fed. Reg. 5,318, 5,337 (Jan. 26, 2024).

**CONCLUSION**

The applications should be denied.

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