Alaska Oil and Gas Association

AOGA

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Mr. Peter Meffert
Department of the Interior
Bureau of Ocean Energy Management
Office of Policy, Regulation and Analysis
45600 Woodland Road
Sterling, VA 20166

Re: Air Quality Control, Reporting, and Compliance (1010-AD82)

Dear Mr. Meffert,

The Alaska Oil and Gas Association ("AOGA") appreciates the opportunity to provide comments on the Bureau of Ocean Energy Management's ("BOEM") proposed rule regarding air quality control, reporting, and compliance as it relates to outer continental shelf (OCS) activities. AOGA is a professional trade association whose mission is to foster the long-term viability of the oil and gas industry for the benefit of all Alaskans. AOGA's members represent the industry in Alaska, which have state and federal interests, both onshore and offshore. Our members have leases and ongoing interest in exploration of oil and gas resources in the Arctic OCS. As detailed below, AOGA believes that BOEM's endeavor to "bring [its] regulations into compliance with the requirements of the Clean Air Act," is neither what the law authorizes nor a prudent use of government resources.

In 2011, Congress transferred the regulation of air quality for Arctic OCS operations from the Environmental Protection Agency (EPA) to the Department of the Interior (DOI). That transfer was born from several months of Congressional hearings and years of bureaucratic struggle regarding the EPA's struggles to create or manage a reasonable regulatory

program for administering emissions rules offshore Alaska. In part due to the DOI's successful oversight of air quality issues in the Western and Central Gulf of Mexico for decades, the Arctic OCS was put on an even playing field.

It is important to note that, in the time following the transfer, there have been no documented or alleged environmental cost or damage resulting from the change – or from offshore sources generally. Perhaps more importantly, AOGA is not aware of any research or data that would suggest OCS oil and gas activities resulted in significant impacts to onshore air quality. As a result, while AOGA appreciates BOEM's intentions in that matter, there does not appear to be any justification for the proposed rule.

AOGA presents the following arguments against BOEM's adoption of the proposed rule and looks forward to engaging in further discourse on this matter. AOGA's comments are meant to address concerns of a general nature as well as issues relating to the potential negative externalities of the proposed regulations on the Arctic OCS specifically. As always, AOGA endeavors to ensure that regulations are justified and, to the extent that there is a need for agency action, any proposed regulations should be narrowly tailored to legitimate ends.

I. BOEM's Proposed Rule is Overbroad, Premature, and Lacks Environmental Justification

A. BOEM lacks sufficient environmental justification for proposed rule

As an initial matter, regulations that endeavor to address theoretical as opposed to actual environmental concerns not only result in negative economic externalities, but also result in finite and limited resources being allocated away from confronting other environmental issues that may be more legitimate and pressing. BOEM need look no further that its own best available science, which details an absence of any justification for increased regulation of offshore air sources. Furthermore, BOEM is currently engaged in additional research regarding this issue, which suggests that it may be premature for it to move forward with this proposed rule. In 2015, BOEM stated, "[o]n the whole, however, OCS operations have a minimal impact on the air quality onshore."[1] That conclusion is supported by numerous DOI studies:

- BOEM's most recent Programmatic Environmental Impact Statement (BOEM 2012-030) addresses the 2012-2017 OCS oil and gas leasing program. It includes photochemical modeling studies indicating maximum contributions of 0.2-1.0 ppb to ozone concentrations at onshore areas exceeding the 75 ppb NAAQS.

[1] BOEM, 2015, EA for Air Rule, p. 17.

- Three EISs for the current (2012-2017) leasing program specifically conclude that onshore air quality impacts will be minimal or insignificant: the 2012-2017 Western and Central Planning Area EIS (BOEM 2012-019), the 2014-2016 Western Planning Area EIS (BOEM 2014-009), and the 2015-2017 Central Planning Area EIA (BOEM 2014-655).
- In addition to the NEPA documents for the current OCS leasing program discussed above, API reviewed twenty-four EISs and Environmental Assessments published by BOEM and the Minerals Management Service between 2002 and 2015 addressing oil and gas lease sales in the Gulf of Mexico region. None of these documents conclude that oil and gas activities have the potential to endanger onshore air quality.
- BOEM has committed $4M to studies intended to better understand the modeling of offshore emissions to inform whether *any* regulatory changes are warranted – even as the best available science all confirms that OCS activities are not significantly impacting state air quality.

B. Given lack of environmental justification, a legitimate question exists as to whether BOEM possesses the legal authority to initiate new regulations

The Outer Continental Shelf Lands Act (OCSLA) authorizes BOEM to enforce

> *compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.), to the extent that activities authorized under [OCSLA] significantly affect the air quality of any State" (43 U.S.C. § 1334(a)(8)).*

42 USC 7407(a) tasks States with the primary responsibility for assuring air quality within the State through the submission of a State Implementation Plan (SIP), which specifies the manner in which National Ambient Air Quality Standards (NAAQS) will be achieved and maintained. States evaluate and define impact based on whether OCS emission sources are significant or otherwise preventing NAAQS attainment in states adjacent to OCS activity. However, as relevant here, states bordering OCS lease areas have repeatedly found that offshore emission sources have no such impacts. For example:

- The Houston-Galveston-Brazoriaozone State Implementation Plan (SIP) includes OCS sources in background contribution but were *not significant.*
- The Baton Rouge ozone SIP included OCS sources in background contribution and the area is *currently proposed for attainment* designation.

- The St. Bernard parish (LA) SO2 SIP *does not include OCS* or any other sources more than 20 km from the nonattainment area, and focuses solely on two local onshore industrial facilities.
- Perhaps most importantly, the 2012-2017 lease sale EIS (OCS EIS/EA 2012-019) specifically concluded that existing regulations are sufficient to prevent adverse onshore air quality impacts:

> *Regulations, activity data reporting via the [Gulfwide Offshore Activity Data System] reporting requirement, and mitigation, such as monitoring the performance of the catalytic converter, would ensure [pollutant concentrations] stay within the NAAQS.* (section 4.1.1.1.2)

If OCS sources were impacting states and bringing them into non-attainment, states and the EPA would have already taken action. Given a resounding lack of environmental justification, AOGA believes that BOEM should, at the very least, refrain from moving forward with the proposed rule until such time that a need for such regulations exist.

C. In addition to the absence of environmental justification, the proposed rule is excessive in its breadth and cannot be reconciled with BOEM's statutory authority.

As addressed in further detail below, BOEM's proposed rule takes the extraordinary and unprecedented step of proposing to regulate emissions from vessels which might service stationary OCS facilities for the entirety of the vessels' journey and attributing those emissions to the OCS facility itself. Previously, vessels in transit or actively servicing an OCS facility would have been included in the emissions profile only if within 25 miles of the facility, which constituted a clearly defined but environmentally precautionary zone of regulation. Anecdotally, BOEM's revised approach is akin to assessing emissions from delivery trucks and trains for their entire journey, no matter the distance, to and from a factory.

Of particular concern to AOGA is that BOEM's proposed regulations are more stringent than even EPA air regulations, which do not attempt to capture vehicle emissions or other 'attributed' indirect supporting activities associated with a given facility. In other words, in addition to the negative externalities this will have on OCS activities, it also represents a dangerous precedent for future regulations. AOGA is similarly concerned that this precedent will be utilized by litigious environmental groups that seek to prevent all development projects.

D. BOEM cannot establish any benefit from this proposed regulation without exceeding the agency's authority and expertise.

The proposed rule proposes to accrue its benefits through a "voluntary" emissions credit trading scheme, forcing pollution reduction onshore in exchange for emissions allowances offshore. Given BOEM's lack of both any authority to regulate onshore emissions and any environmental need for the proposed regulations, this results in the creation of a strained 'cap and trade' mechanism to regulate emissions which are totally disconnected and unrelated. The rule states:

> The use of emissions credits in lieu of BACT would provide a net environmental benefit because the use of emissions credits would typically involve a reduction in emissions onshore or over State submerged lands, at that point where the impact to State air quality is greatest, rather than on the OCS, which might be far away from the point at which any impact might be felt. (emphasis added)

In other words, BOEM explicitly provides that it intends to regulate relatively harmless offshore emissions as a conduit for reductions in more impactful onshore emissions, where BOEM lacks any jurisdiction to regulate. AOGA urges BOEM to reconsider its endeavor to extend its regulatory regime to arenas where it lacks any credible jurisdiction.

E. Finally, the costs, complexities, and burdens of this proposal cannot even be fully estimated because the proposed rule asserts unlimited authority to regulate further with no additional process.

Given the proposed rule's assertion that BOEM possesses the authority to drastically strengthen regulations in the future with no further cost analysis or public process, the potential associated regulatory costs are infinite. The proposed rule explicitly provides that future rulemaking will not be required to change the exemption formula within the range proposed in the rule, as well as allowing the Regional Supervisor to require a lessee or operator to apply "additional [emission reduction measures] on either a temporary or permanent basis, depending on the circumstances, if he/she determines that projected emissions, or where applicable complex total emissions, may cause or contribute to a violation of a NAAQS…." AOGA has significant concerns regarding the uncertainty of the potential costs associated with the proposed regulations.

II. The Proposed Rule is particularly problematic as applied in Alaska.

A. The proposed rule would undermine Congressional intent in transferring jurisdiction over the OCS in the Beaufort and Chukchi Seas.

In 2011, Congress amended §328 of the CAA to transfer the authority for regulating air emissions from the EPA back to DOI for those parts of the OCS adjacent to the North Slope Borough of the State of Alaska. The impetus for this action was recognition by Congress of a lack of regulatory parity between air permitting in Alaska's OCS versus the GOM's, as well as an acknowledgment that the EPA's process for permitting Alaska OCS activities was both unpredictable and inefficient as compared to BOEM's air permitting quality regime in the GOM. Congress intended to add certainty to air permitting in Alaska's OCS through the transfer of regulatory authority to BOEM, and AOGA believes that the proposed regulations serve to significantly undermine that Congressional intent. In other words, AOGA would caution BOEM that the proposed rule will likely result in the very uncertainty that Congress attempted to remedy, all of which serves to discourage future oil and gas development projects in the Arctic OCS.

Currently, operators have relinquished all but one active lease in the Chukchi Sea. Additionally, the DOI has cancelled two Arctic offshore lease sales scheduled under the current five-year offshore oil and gas leasing program for 2012-2017, and have elected to include only two lease sales in the Chukchi and Beaufort Seas in the draft version of the next five-year program. Given the current status of Arctic OCS activities and interest, AOGA is legitimately concerned that the proposed regulations will only serve to increased uncertainty and further deter potential operators and investors from pursuing exploration in Alaska's OCS – an outcome in direct contrast with OCSLA's purposes.

B. Oil and gas activities in the OCS of the Alaska's Beaufort and Chukchi Seas do not "significantly" affect the air quality of Alaska, or any other state.

The DOI has conducted numerous studies in Alaska, and other states, to evaluate the potential effects of OCS emissions on onshore air quality. These studies have found a lack of any significant effects, and AOGA notes that the level of activities in Alaska have not increased in a manner that would suggest those studies findings are obsolete. Furthermore, and as addressed above, BOEM is currently engaged in a study in Alaska as preparation to support the EIS for the next five-year program, as well as assess existing Emission Exemption Thresholds (EETs). Intuitively, AOGA encourages BOEM to allow for the completion of that study before seeking to unjustifiably expand its AQRP in Alaska.

C. Many of the Proposed Rule Provisions are Particularly Problematic in Alaska.

The Proposed Rule fails to acknowledge or account for many Arctic-specific operational constraints. AOGA believes that, if adopted, these provisions of the proposed regulations will create significant challenges for any future activity in the Arctic OCS, while providing little, if any, environmental benefit to the North Slope Borough. Unlike the shared use of support vessels in the GOM, Arctic exploration and development is likely to require (for the foreseeable future) that each drilling rig or platform have its own ice management vessels, supply vessels, oil spill response vessels, and other Marine Support Craft (MSC) – especially if BSEE continues its requirement of standby drilling rigs on scene for the prospect of same season relief drilling. This will significantly increase the emissions attributed to a facility compared with similar exploration and production activity in the GOM where MSC may support multiple facilities. However, although there may be more MSC required for Arctic operations, they do not need to operate in close proximity to the drilling unit or platform, but can and do typically stage and assist on other assets at a considerable distance from the facility they support, thereby creating efficiencies and minimizing any potential cumulative onshore impacts.

BOEM's proposal to attribute emissions for the entire time a support vessel is absent from its home port does not take vessel origin or location into account, and therefore substantially overstates potential onshore effects of support vessel emissions, both in Alaska and the GOM. Vessels supporting activities in the Arctic come from all over the world, and may stop and spend extended lengths of time at many ports in their transit. BOEM's proposed rule places an impossible and unprecedented burden on applicants should they be required to assess potential impacts at each point along their journey.

Vessels designed and approved for Arctic conditions are relatively few in number, so they must sometimes be leased from international operators. Thus, the demand for emission attribution for the lifecycle of a vessel's journey presents contractual and logistical challenges, which increases the likelihood of vessel substitutions. It is already difficult for Arctic operators to secure and commit to specific support vessels, so supplying the very detailed vessel and emissions information required by BOEM's proposed rule will be at best challenging if not purely speculative, requiring numerous revisions and unnecessary additional review/approval with no additional environmental benefit.

Furthermore, BOEM's expanded facility definition and clear indication of more stringent EETs will increase requirements for ERMs. The use of ERMs would be particularly challenging in the Arctic because, unlike in the Gulf States, there are no potential onshore emission reduction programs in Alaska. Further, there are no significant onshore sources of emissions within 150 miles of the Chukchi Sea coastline, so the bank would be empty even if an emission banking program were somehow established. Other Alaska-specific

concerns related to BOEM's facility definition and more stringent EET requirements include, but are not limited to:

- The cost and logistical challenges of technical support and maintaining expendables (catalysts, ammonia, etc.) is substantially greater for operations in the remote Arctic Ocean.
- The short drilling season (currently, approximately four months) substantially reduces the cost-effectiveness and potential benefits of additional controls or engine substitutions.
- Exploration rigs are likely to be leased, so installing control equipment would require challenging negotiations with owners over modifications, which add no environmental benefit. Because the exploration period may last only a few years, at which time the drilling unit may move to another Arctic country where such controls are not required, the control equipment lifetime is likely to be short and the cost-effectiveness of such equipment is further reduced.
- Based on the use of BOEM's Offshore Economic Cost Model, the potential benefits of ERM are very low because benefits are based primarily on reducing damage to agriculture and human health. Yet the population's location, density, and exposure pathways for OCS activities from the offshore to the North Slope Borough are extremely low, and there is virtually no agriculture in the North Slope Borough.

Finally, BOEM does not have authority under OCSLA to require Class I area assessments. Further, in the case of the Chukchi and Beaufort Seas, the nearest Class I area is Denali National Park. Given that the park is on the other side of a mountain range and more than 500 miles away, it would be absurd to allege associated impacts or require further proof of the absence of impacts. In addition to the analyses required for Class I areas, the Proposed Rule also requires applicants to assess air quality related values in "sensitive Class II areas" designated by Federal Land Managers (FLMs). The FLMs have designated the Arctic National Wildlife Refuge (ANWR) as a sensitive Class II area. The requirement to assess ANWR as a pseudo-Class I area is arbitrary and places a large burden on OCS sources, especially operations in the Beaufort Sea. BOEM does not have authority under OCSLA to require Class I area assessments, or further requirements for sensitive Class II areas, as designated at the whim of the FLMs.

III. Conclusion

Again, AOGA appreciates the opportunity to provide comment on BOEM's proposed regulations. For the reasons articulated above, AOGA has significant reservations about the scope, need, and costs associated with the proposed rule. Given the complete absence of scientific justification for the proposed rule, AOGA urges BOEM to withdraw the proposed rule until such time that both the Arctic and GOM studies are completed. At that time, BOEM will be better situated to determine what regulations, if any, are needed to

address potential environmental concerns. If you have any questions regarding these comments, please feel free to contact me at 907-272-1481 or at kindred@aoga.org.

Sincerely,

Joshua M. Kindred
Regulatory & Legal Affairs Manager