



EARTHWORKS

February 1, 2019

Dear STRONGER,

Thank you for the opportunity to provide comment on STRONGER's Air Quality Guidelines (AQG) to control emissions from oil and gas activities. Please accept these comments on behalf of Earthworks. We are a nonprofit organization dedicated to protecting communities and the environment, while seeking a just transition toward renewable energy.

### **General Comments**

Earthworks especially appreciates three aspects of the AQG's general approach. First, they recommend states implement the Environmental Protection Agency (EPA)'s 2016 methane rule (40 CFR Part 60, Subpart OOOOa or "methane rule"). The AQGs also recognize the methane rule's limitations, especially as it applies to state-specific needs.

For this reason, we also commend STRONGER for emphasizing how each federal Clean Air Act regime provides the regulatory floor upon which states build a suitably tailored oil and gas air program (i.e., Title V (major sources), National Ambient Air Quality Standards (NAAQS), New Source Performance Standards (NSPS), etc.). To accomplish this, the public, agencies, and regulated community should have the best understanding of which sources pollute the most.

Updates to state emissions inventories, systems, and recordkeeping (10.3.1 and 10.3.4) provide a good place to start. Improving the data and systems will require better air monitoring (10.3.3) to provide a more sound scientific baseline for states to enact source-specific requirements (10.3.2). States must also devote the resources needed to enforce their updated air program requirements (10.2.4-10.2.7).

Finally, throughout the AQG's proposal, STRONGER creates a strong presumption favoring public participation. This is crucial. Earthworks supports the formation of multistakeholder Advisory Groups (10.2.8 and 4.2.2.3) as a forum to resolve air quality concerns and provide accountability to government and industry.

### **Specific Comments**

#### **10.2.1 Scope of Authority**

The AQG should explicitly counsel states against preempting municipalities from ordinances protecting the health, safety, and welfare of their own residents. This guideline should provide that, in no case, shall an ordinance weaken state protections.

#### **10.2.2 Jurisdiction and Cooperation Between Agencies**

We appreciate AQG's recommendation that agencies communicate with the regulated community and the public. The blend of state, federal, and tribal agencies with responsibility for air emissions from oil and gas facilities can create confusion for communities facing pollution. Earthworks agrees that Memoranda of Understanding (MOUs), the creation of Advisory Groups, task forces, and joint facility inspections with all stakeholders, including the public, may help facilitate better coordination.

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### 10.2.3 Permits, Authorizations and Exemptions

As the AQG notes, the Clean Air Act prohibits the construction of a major source without a permit. Earthworks has documented problems in Pennsylvania and Texas where unscrupulous operators deliberately manipulated the permit process to avoid Title V classification. They did so primarily through seeking “minor” permits for frequent expansions in a piecemeal fashion, while artificially revising emissions estimates downward so to appear to remain under Title V thresholds. (See Earthworks’ 2017 report *Permitted to Pollute*, [https://earthworks.org/publications/permitted\\_to\\_pollute/](https://earthworks.org/publications/permitted_to_pollute/).)

Generally, applicants face few hurdles in receiving the necessary permits and authorizations. The main deficiency in state air programs comes in enforcement (discussed below), not in processing permit applications. Speeding up the permit process will neither result in better agency decisions nor in more effective environmental and public health outcomes. We oppose mechanisms that facilitate faster permitting including permit exemptions and permits by rule.

We applaud the AQG for encouraging states to consider federal rules (i.e., the methane rule) and pushing states to adopt additional air quality requirements beyond federal requirements to address their own needs.

### 10.2.4 Compliance Monitoring, Demonstration & Assurance

Earthworks agrees that states need clear legal authorities to investigate, fine, and take other enforcement actions. Relatedly, states should improve records retention systems and make records available on a publicly accessible website or upon request.

This AQG should advise states to presume all records are public. Operators seeking protection for purported trade secrets or confidential business information (CBI) must take appropriate steps to safeguard the information and demonstrate that its disclosure would substantially harm their business interests.

We commend the AQG proposal to encourage state inspection and monitoring information and procedures independent of the regulated community. This may help deter some facility operators from ducking Title V designation. It will also allow the state to determine additional program requirements, conduct inspections, target investigations, and assist compliance.

In some cases, states may create appropriate incentives to quickly correct violations. As discussed below, independent inspections by qualified third-parties can catalyze faster repairs resulting in better compliance, efficiency, and public health outcomes. States should not rely upon voluntary measures, industry pledges, and self-reporting mechanisms as evidence of reduced emissions or regulatory compliance.

### 10.2.5 Enforcement

We agree states should have effective enforcement tools to punish and deter violations of state air programs. Tools should include efficient methods for seeking fines, penalties, and administrative orders including permit revocation. States must first act as a backstop for protecting air quality, through regulation, inspection, and enforcement. And yet policymakers have long recognized that not all wisdom resides within agency bureaucracies and state Capitols. For this reason, states should supplement their own enforcement by empowering the public in two ways.



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First, we support the right to judicial review of state action, from any aggrieved party with standing (10.2.5.3). States should ensure their law and regulations contain standard citizen suit provisions, like those of the Clean Air Act (42 USC 7604), opening the courthouse doors to the public harmed by oil and gas air pollution. Second, state agencies should create Advisory Groups (4.2.2.3) for citizen science, especially independent verification of Leak Detection and Repair (LDAR) compliance.

Optical Gas Imaging (OGI) technology has become a standard part of accepted LDAR procedures. In many states, regulatory agencies hire, train, equip, and certify inspectors to perform OGI, other LDAR, or other inspection methods. More states now require operators, or their agents, to perform periodic LDAR inspections as well. To reduce the burden on agencies and the regulated community, states may complement required LDAR inspections with independent verification.

States, just as operators, may partner with third parties such as private consultants, academic institutions, and non-governmental organizations to detect and report emissions leaks. States can require independent verifiers to use the same or similar state-approved leak detection methods (i.e., OGI or EPA Method 21). Independent inspections may provide valuable assistance to regulators and operators by revealing leaks most in need of repair.

This would allow states and operators to focus inspection enforcement resources more efficiently. Prioritizing repairs based upon known leaks would reduce emissions, save money, and lower the compliance burden. As an incentive, an operator can satisfy a periodic LDAR inspection requirement by certifying to the state that they fixed the leak detected from the independent inspection during the same period.

### **10.2.6 Staffing and Training and 10.2.7 Data Management**

Earthworks agrees that an effective state air program must have adequate staffing, training, and data systems.

### **10.2.8 Public Involvement**

We support this AQG's recommendation for public involvement in accordance with STRONGER's guidelines in Sections 4.2.2.2 and 4.2.2.3. In particular, we support states creating Advisory Groups for the public and the regulated community to weigh the effectiveness of state regulation, inspection, and enforcement.

The Advisory Groups could help resolve community complaints, promote effective compliance, and establish a social license to operate. The panels could similarly serve as a forum for prioritizing repairs of leaks, adapting emissions inventories (in Sec. 10.3.4), and drive changes in operational practices.

This AQG should also encourage states to grant public hearings upon request.

### **10.3.1 Delineation of Sources**

We support this AQG recommendation for states to inventory all their air emissions sources. States should make these inventories available upon request and on a publicly accessible website.

In particular, we appreciate the importance the AQG places upon counting emissions from grandfathered and other existing facilities that sometimes avoid inventory reporting. Many oil and gas



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states have old or abandoned conventional wells and infrastructure that leak significant amounts of methane and volatile organic compounds.

### **10.3.2 Source-Specific Requirements**

Most states should control air emissions across the entire oil and natural gas chain by carefully considering together the methane rule and EPA's 2016 Control Technique Guidelines for the Oil and Gas Industry (CTGs). The AQG's approach properly considers federal requirements as a floor, with an eye toward source-specific requirements that target state's individual emissions reduction needs. This frees states to implement at least three kinds of more stringent protections.

First, state protections should apply broadly to all existing air emissions sources--without exception, including conventional oil and gas production, old, abandoned, and grandfathered facilities. Second, states should regulate methane directly. Third, states must apply protections to all sectors of their oil and gas industry, including downstream from processing and transmission.

As the oil and gas industry continues to expand, an effective state air program will identify each oil and gas emissions source type within its borders. This will help agencies determine the accuracy of Potential to Emit (PTE) estimates from permit applicants. States should strictly scrutinize permit applications from expanding facilities in nonattainment areas or teetering on the edge of Title V thresholds.

We also support state provisions designed to quantify and minimize waste from venting and flaring.

### **10.3.3 Air Quality Monitoring Networks**

States should expand their ambient air quality monitoring networks to include monitors close to oil and gas sources, which often occurs in rural areas. Doing so is critical for determining the additive air quality impact of new drilling and infrastructure, and in turn states' attainment status for ozone and other pollutants. Again, this AQG correctly recognizes many states should impose monitoring standards that go beyond those of federal law. As these AQG's note:

*Areas with significant oil and gas production activity may have few or no regulatory air quality monitors, because these areas may not meet typical criteria for siting of monitors, such as population density.*

### **10.3.4 Reporting, Emission Inventories & Recordkeeping**

We support states conducting periodic reviews of their emissions inventories in order to help the public and the regulated community adjust to changes in production or operational practices.

### **10.3.6 Long-Term Planning, Prioritization & Evaluation**

Interested stakeholders (including environmental and community groups) should participate in periodic planning and analyses to ensure that air quality programs remain protective of public health and the environment. We agree with STRONGER this is especially true as states with oil and gas exploration, production, or infrastructure periodically update their NAAQS, State Implementation Plans (SIPs), Title V, and other Clean Air Act delegated programs.

However, streamlined permitting programs and permits by rule do not remain the most protective. Voluntary measures, industry driven pledges, and market-based incentives can never substitute for effective regulation and enforcement.

### **Conclusion**



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Overall, these AQGs point state air programs in the right direction. These guidelines acknowledge that the baseline regulatory standard begins with adoption and implementation of federal rules, include EPA's methane rule. States should also inventory their oil and gas emissions sources while they hire, train, and equip more enforcement officials. With updated systems, staffing, and emissions data, the state can use sound science and community input to develop air programs more protective of public health and the environment.

Finally, we appreciate the opportunity to provide our comments on these AQGs. Most importantly, these guidelines repeatedly elevate the importance and role of considering public comment in air program decisions. Thank you for your consideration.

Sincerely,

Aaron Mintzes

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