

June 11, 2010

EPA Docket Center (EPA/DC)
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Attention: Docket ID [EPA–HQ–OAR–2009–0923; FRL–9131–1]

Subject: Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems

These comments are filed on behalf of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents the interests of the independent oil and natural gas producers in Kansas. With over 1,400 members across the entire state, KIOGA is the lead state and national advocate for Kansas independent oil and natural gas producers. Our members account for 86% of the oil and 63% of the natural gas produced in Kansas. Nationally, independent producers drill about 90% of American oil and natural gas wells, produce over 65% of American oil, and more than 80% of American natural gas.

In addition to the specific comments made herein, we support those comments submitted by the Independent Petroleum Association of America (IPAA) and the American Exploration and Production Council (AXPC) and those comments submitted separately by the participants in these comments.

The Environmental Protection Agency (EPA) is proposing a regulation to require reporting of greenhouse gas (GHG) emissions including onshore petroleum and natural gas production systems. These comments will address several specific issues raised in the proposal that can have a compelling bearing on independent American natural gas and oil producers.

Statutory Authority for the Inventory

EPA's authority to require GHG reporting stems from the Consolidated Appropriations Act, 2008. The relevant language from the Act is:

Of the funds provided in the Environmental Programs and Management account, not less than \$3,500,000 shall be provided for activities to develop and publish a draft rule not later than 9 months after the date of enactment of this Act, and a final rule not later than 18 months after the date of enactment of this Act, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.

Equally relevant, this language exists in an appropriations bill. Appropriations bills do not provide broad and enduring authority for agencies to create new programs. Rather, appropriations bills are time limited, creating funding and policy actions that cannot extend beyond the scope of the direction in the bill. For example, for many years Congress included a moratorium on the development of American offshore oil and natural gas resources in appropriations bills. But, because of the time limited nature of the appropriations bills, the moratorium had to be inserted for each fiscal year. This GHG reporting requirement must be read in a similar context. EPA has not done so.

Rather, EPA asserts that it “... is proposing this rule under its existing CAA authority, specifically authorities provided in section 114 of the CAA.” But, use of the CAA brings with it limitations inherent in the CAA.

Facility Definition

Most notably, we believe that use of the CAA denies EPA the authority to create a definition of a facility that differs from that in the CAA. EPA proposes the following definition:

Onshore petroleum and natural gas production facility means all petroleum or natural gas equipment associated with all petroleum or natural gas production wells under common ownership or common control by an onshore petroleum and natural gas production owner or operator located in a single hydrocarbon basin as defined by the American Association of Petroleum Geologists which is assigned a three digit Geologic Province Code. Where an operating entity holds more than one permit in a basin, then all onshore petroleum and natural gas production equipment relating to all permits in their name in the basin is one onshore petroleum and natural gas production facility.

Under this definition, for example, all wells under common ownership in most of Kansas would be considered as one facility. This would be analogous to proposing that every McDonalds restaurant in the State of Kansas should be considered as one facility because they have the same name and are franchised from a common source.

Nothing in the CAA suggests that EPA can define an onshore petroleum and natural gas production facility as broadly as it proposes. In reality, the only guidance provided to EPA in the CAA resides in Section 112(n)(4)(A) where it states:

... in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose

EPA proposes its basin approach and solicits comment on the option of using a similar approach involving “field-level reporting”. In doing so, the Agency discounts the obvious choice – the well pad. Clearly, the well pad looks like a facility under the definition in the CAA and is the typical permitting unit under CAA regulations. EPA considered a well pad approach and “EPA analyzed the average emissions associated with each of the four well pad facility cases and determined that average emissions at these operations were low (from about 370 metric tons of CO₂e per year to slightly less than 5,000 metric tons of CO₂e per year).” Recognizing that individual sources were small, EPA chose to create its novel basin approach.

We identified this issue in our comments to EPA’s proposal in 2009 when we stated:

We believe that including onshore petroleum and natural gas production facilities in the reporting requirements runs counter to EPA’s focus in this proposal. EPA structured the proposal by selecting its 25,000 tons/year facility reporting threshold in part based on a cost effectiveness test to capture most of the GHG emissions while limiting excessive costs. Despite this effort, under the current proposal 43 percent of the first year capital costs to comply with the rule will be borne by the petroleum and natural gas industry to report an estimated 3 percent of the nation’s GHG emissions. Expanding the reporting requirements to onshore facilities will dramatically increase these costs unnecessarily.

American petroleum and natural gas production comes from approximately 933,000 wells - roughly 500,000 oil wells and 433,000 natural gas wells. These facilities are spread across 33 states. Offshore facilities would be within the scope of the reporting requirements. EPA estimates that 50 offshore facilities would be covered under the 25,000 tons/year threshold. If EPA were to expand the reporting requirements to onshore facilities, it is highly unlikely that any production well facility would meet the reporting threshold. For example, approximately 85% of oil wells and 74% of natural gas wells are marginal wells producing less than 15 barrels/day of oil and 90 mcf/day of natural gas, respectively. Most of these operations are owned by small businesses. None of them would exceed the reporting threshold individually.

EPA largely seems to recognize this reality when it states:

...this segment is not proposed for inclusion primarily due to the unique difficulty in defining a “facility” in this sector and correspondingly determining who would be responsible for reporting.

EPA has requested comments on how to define a facility for onshore petroleum and natural gas production and whether to require reporting on a basin level. We believe that the appropriate facility definition tracks the nature of the operation - essentially a well pad which may contain one or several wells and the attendant separation and storage facilities. As we discussed above, these operations will fall well below the reporting threshold. To approach the reporting on a basin level would result in compelling this industry to use a reporting threshold far below the 25,000 tons/year threshold required for other industries. In essence, all production operations would have to determine emissions levels by whatever estimation or monitoring requirements would apply. This would impose dramatically different costs. To put all of this in some perspective, EPA’s INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 1990-2007 (Released on April 15, 2009) would suggest that the GHG emissions from natural gas systems and petroleum systems account for roughly 2.3% of U.S. GHG emissions. EPA suggests that about 27% of these emissions come from onshore petroleum and natural gas production operations - or roughly 0.6% of U.S. GHG emissions.

There is no compelling rationale to justify imposing on this segment of American industry a far costlier reporting requirement, capturing hundreds of thousands of wells many owned by small businesses, solely for the purpose of minimally improving the U.S. GHG emission inventory.

This circumstance has not changed appreciably. EPA argues that it has underestimated the amount of GHG emissions from onshore petroleum and natural gas production systems. The 2008 U.S. Inventory of Greenhouse Gases reported 131 MMTCO₂e from petroleum and natural gas systems. EPA believes the emissions are 351 MMTCO₂e. To put this in the same perspective as our 2009 comments, these systems would account for slightly more than 6% of U.S. GHG emissions and the onshore petroleum and natural gas production systems would be

approximately 3.9%. EPA must recognize the burden it will impose on the small businesses that operate the majority of these systems.

Small Business Implications

EPA cavalierly asserts that this proposal "...will not have a significant economic impact on a substantial number of small entities." But, can this be true? Comparing numbers of wells that must report against the number of wells operated by small businesses show a different result.

In creating its basin-level reporting approach, EPA indicates that it will capture 81% of the onshore petroleum and natural gas production GHG emissions. It also states - in rejecting the logical well pad facility definition - that individual well pad emissions were low. Consequently, we must conclude that EPA's definition must capture something close to 80% of the operating wells.

In 2008, there were 960,303 operating wells in the U.S. (525,287 oil wells and 435,016 natural gas wells, with about 7,000 of these in the federal offshore). The Energy Information Administration reports that 85% of these oil wells and 73.3% of these natural gas wells are marginal wells. Assuming a proportional distribution across wells, the following results would be produced:

	Wells Reported Under Rule	Marginal Wells Reported Under Rule
Oil Wells	417,300	354,815
Natural Gas Wells	345,213	253,041
Total	762,513	607,856

Clearly, there will be a pervasive burden borne by America's marginal well producers. EPA is well aware that the companies operating marginal wells are dominated by small businesses. To suggest that the proposed rule will not have a significant impact on small businesses is simply incorrect.

Reporting Threshold

We continue to endorse a 25,000 tons/year reporting threshold for a facility. However, we believe the onshore petroleum and natural gas production should be treated as other industries with a facility definition that is related to real operations. In this instance - consistent with other portions of the CAA - the well pad is an appropriate facility definition.

As we stated in our 2009 comments, there are clearly emissions estimating tools available that have been used and can be improved without imposing these new requirements. If better estimates are needed for this small portion of the GHG inventory, EPA can turn to its own capabilities to address these estimates. EPA operates the Natural Gas Star program. It cites information in supporting documents to the 2009 proposal indicating that Natural Gas Star has identified and to some degree determined what emissions areas at production systems generate the most emissions. Similarly, API released a new version of its *Compendium of Greenhouse Gas Emissions Estimation Methodologies for the Oil and Gas Industry*. These tools can be used to create reasonable average emissions projections for production systems that could be linked to production volumes. And, EPA could then improve its GHG estimates for onshore petroleum and natural gas production without imposing the costly reporting burdens that would result from inclusion of these operations in the reporting requirements.

Conclusion

We believe that EPA has created an unreasonable definition of onshore petroleum and natural gas production systems. Its action is taken solely because it realized that a true production facility fell well below a reasonable reporting threshold. If the same approach were followed in other industries and commercial operation, reporting could be required for virtually every GHG source in the U.S. We think this creates an appalling precedent and should be rejected. Instead, we suggest that EPA can estimate these emissions without imposing such an unreasonable burden.

If there are questions regarding these comments or if additional information is required, please contact Edward Cross at KIOGA, 785-232-7772.