

Background Information for EPA Response to Petition To Add Oil and Gas Extraction to the Toxics Release Inventory

What is the relevant background for this response letter?

By a letter dated October 24, 2012, the Environmental Integrity Project, along with 16 other organizations (collectively, Petitioners),¹ petitioned (Petition) the U.S. Environmental Protection Agency (EPA or Agency) pursuant to section 553(e) of the Administrative Procedure Act (APA) to add the Oil and Gas Extraction sector (Standard Industrial Classification (SIC) code 13) to the scope of sectors covered by the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023, commonly known as the Toxics Release Inventory (TRI). Petitioners supplemented the Petition with additional materials on three other occasions: communications dated January 30, 2014; May 1, 2014; and May 12, 2014.

On January 7, 2015, Petitioners filed a lawsuit against EPA alleging that EPA's delay in responding to the Petition was unreasonable and therefore in violation of the requirements of the APA. A Joint Motion to Stay the Proceedings filed by the parties to the litigation stated that EPA anticipated responding to the Petition by October 30, 2015.

The letter at issue (Response Letter) responds to the Petition within the timeframe anticipated in the Joint Motion to Stay the Proceedings.

What action does the Petition request that EPA take?

The Petition requests that EPA add the Oil and Gas Extraction sector, as defined by SIC 13, to the scope of the TRI. SIC 13 comprises the following subsectors:

- Crude Petroleum and Natural Gas (SIC 1311);
- Natural Gas Liquids (SIC 1321);
- Drilling Oil and Gas Wells (SIC 1381);
- Oil and Gas Field Exploration Services (SIC 1382); and
- Oil and Gas Field Services, Not Elsewhere Classified (SIC 1389).²

¹ The signatories to the October 24, 2012 Petition were the Environmental Integrity Project, Chesapeake Climate Action Network, CitizenShale, Clean Air Council, Clean Water Action, Delaware Riverkeeper Network, Earthworks, Elected Officials to Protect New York, Environmental Advocates of New York, Lower Susquehanna Riverkeeper, Natural Resources Defense Council, OMB Watch (now Center for Effective Government), PennEnvironment, Powder River Basin Resource Council, San Juan Citizens Council, Sierra Club, Texas Campaign for the Environment, PennFuture and Responsible Drilling Alliance also joined as signatories to the Petition, each by separate letters dated December 31, 2014.

² While the scope of TRI is defined in EPCRA using SIC codes, note that the SIC classification system has since been largely superseded by the North American Industrial Classification System (NAICS), which EPA adopted for TRI purposes in 2006. In the rulemaking to be initiated, EPA intends to discuss the Oil and Gas Extraction sector using both SIC and NAICS classifications.

These subsectors include a range of process steps, including exploration, well development and completion (including hydraulic fracturing), production, and site abandonment.

Why is the Oil and Gas Extraction sector (SIC 13) not already covered by the TRI?

Congress determined the original sector scope of TRI, requiring TRI reporting by facilities in the manufacturing sectors, as defined by SIC codes 20 through 39. Congress also granted the EPA Administrator the authority to add sectors to or delete sectors from the scope of TRI. While EPA exercised this authority in 1997 to add six sectors to the scope of TRI,³ EPA has not added the Oil and Gas Extraction sector (SIC 13).

What is EPA committing to do in its response to the Petitioner?

The Response Letter grants, in part, and denies, in part, the Petition. Specifically, the Response Letter grants the portion of the Petition that requests EPA initiate a rulemaking to add natural gas processing facilities to the scope of the TRI. The Response Letter denies the remainder of the Petition.

What is EPA's anticipated timeframe for initiating a rulemaking to add natural gas processing facilities?

EPA intends to act swiftly in initiating a rulemaking to add natural gas processing facilities, but we are unable to provide specific date estimates at this time.

Why does EPA intend to propose adding natural gas processing facilities to TRI?

EPA believes the addition of natural gas processing facilities to TRI would meaningfully increase the information available to the public and further the purposes of EPCRA § 313. EPA estimates that more than half of the 517 natural gas processing plants in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use at least one TRI-listed chemical in excess of applicable threshold quantities.

Using information from Canada's National Pollutant Release Inventory (NPRI), a program comparable to TRI and which covers natural gas processing plants, EPA estimates that natural gas processing facilities manufacture, process, or otherwise use more than 25 different TRI-listed chemicals, including hydrogen sulfide, benzene, toluene, ethylbenzene, and xylene. Additionally, EPA estimates that approximately 42 million people, 48% of whom are minorities and 14% of whom live below the poverty line, reside within 49 kilometers (approximately 30 miles) of at least one natural gas processing plant.

³ EPA added metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk plants and terminals-wholesale, and solvent recovery services to the scope of TRI. 62 FR 23843 (May 1, 1997).

EPA believes that TRI reporting by natural gas processing facilities would provide interested communities and other users of TRI data with significant release and waste management data regarding a range of toxic chemicals and that these data are not readily available elsewhere.

Why is EPA declining to add the remainder of SIC 13 at this time?

While EPA agrees with Petitioners that numerous processes within the Oil and Gas Extraction sector are associated with significant quantities of TRI-listed chemicals, EPA is declining to propose adding all of SIC 13 at this time. As articulated in the Response Letter, EPA is already engaged in a wide array of rulemaking, guidance, research, and other outreach activities targeting the oil and gas extraction sector. Additionally, the Petitioners have failed to adequately address the EPA's conclusion, stated in 1996, that "taken at the smallest unit (individual well), neither the employee nor the chemical thresholds are likely to be met." 61 FR 33588, 33592 (June 27, 1996).⁴ EPA estimates that, as a result, TRI reporting from such well-level activities would present a limited picture of the chemical releases associated with these activities.

How many natural gas processing facilities does EPA expect to report?

EPA estimates that more than half of the 517 natural gas processing plants in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use at least one TRI-listed chemical in excess of applicable threshold quantities.

How do the data expected to be collected under TRI from natural gas processing plants differ from other EPA data, such as the National Emissions Inventory?

While EPA's National Emissions Inventory (NEI) program also collects and publishes air emissions data pertaining to natural gas processing plants, TRI reporting by these facilities would offer key benefits not provided by the NEI. First, the NEI is limited to air emissions, whereas TRI requires disclosure of release to air, land, and water, as well as waste management and pollution prevention information. Second, the NEI is published on a triennial basis, whereas the TRI is published annually. Third, the different purposes of the two programs drive different user interfaces. TRI was developed to provide the public with information about the disposition of toxic chemicals in their communities, whereas the NEI was developed to collect data to support air modeling and risk assessments at the national level. Given TRI's community-right-

⁴ A TRI-covered facility must submit a TRI form for each chemical "manufactured, processed, or otherwise used" in excess of designated threshold amounts. The applicable threshold varies depending on the category of TRI chemical at issue and whether the chemical was manufactured, processed, or otherwise used. For most TRI-listed chemicals, the applicable reporting thresholds are 25,000 pounds for chemicals "manufactured" or "processed" and 10,000 pounds for chemicals "otherwise used." For chemicals categorized as persistent, bioaccumulative, and toxic (PBT), the applicable reporting threshold may be 0.1 grams, 10 pounds, or 100 pounds, depending upon the PBT chemical.

to-know foundations, the user interface for TRI data is designed to be especially accessible and manipulable, with numerous inspection, download, and visualization tools available.