



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OCT 22 2015

Mr. Eric Schaeffer, Executive Director
Mr. Adam Kron, Attorney
Environmental Integrity Project
1000 Vermont Avenue, NW, 11th floor
Washington, D.C. 20005

Dear Messrs. Schaeffer and Kron:

The Environmental Integrity Project, together with 16 other organizations, submitted in an October 24, 2012, letter a petition to the U.S. Environmental Protection Agency pursuant to the Administrative Procedure Act to add the Oil and Gas Extraction industrial sector to the scope of sectors covered by the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act, commonly known as the Toxics Release Inventory. The Environmental Integrity Project supplemented the petition by submitting additional materials on three other occasions: communications dated January 30, 2014; May 1, 2014; and May 12, 2014.

The EPA is granting in part and denying in part your petition, and I have enclosed our formal response.

I appreciate your interest in these issues and in ensuring that we provide the public with information about toxic-chemical releases and pollution-prevention activities, consistent with the EPA's statutory authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy".

Gina McCarthy

Enclosure

Formal Response to October, 24, 2012, Petition to Add the Oil and Gas Extraction Industry, Standard Industrial Classification Code 13, to the List of Facilities Required to Report under Section 313 of the Emergency Planning and Community Right-to-Know Act

By a letter dated October 24, 2012, the Environmental Integrity Project (EIP), together with 16 other organizations (collectively, Petitioners),¹ submitted a petition to the U.S. Environmental Protection Agency (EPA or the Agency) pursuant to section 553(e) of the Administrative Procedure Act (APA) to add the Oil and Gas Extraction industrial sector (Standard Industrial Classification (SIC) code 13) to the scope of industrial 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). EIP supplemented the Petition by submitting additional materials on three other occasions: communications dated January 30, 2014; May 1, 2014; and May 12, 2014.

This document constitutes the EPA's response to the Petition. As explained below, the Agency hereby GRANTS in part and DENIES in part the Petition.

I. Background

A. General

Facilities must annually file TRI reports with EPA for each year in which the facility meets three criteria:

1. The facility manufactures, processes, or otherwise uses a TRI-listed chemical in excess of the applicable reporting threshold;
2. The facility has 10 or more full-time employees (or equivalent); and
3. The facility is in a TRI-covered industry sector.²

The Petition requests that EPA modify the scope of the third criterion: the industry sectors to which the TRI reporting requirements apply. Congress established the original scope of TRI sectors subject to Section 313 reporting, requiring reporting by facilities in the manufacturing sectors covered by SIC codes 20 through 39. Congress also granted the EPA Administrator the discretionary authority to add or delete sectors to/from the scope of TRI.³ The Petition requests that EPA exercise its discretionary TRI sector addition authority to add the Oil and Gas Extraction sector, as defined by SIC code 13.

SIC 13 is broad in scope, comprising the following subsectors:

- Crude Petroleum and Natural Gas (SIC 1311);
- Natural Gas Liquids (SIC 1321);
- Drilling Oil and Gas Wells (SIC 1381);

¹ The signatories to the October 24, 2012 Petition were 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, and 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 EPCRA § 313(b)(1)(A).

³ EPCRA § 313(b)(1)(B).

- Oil and Gas Field Exploration Services (SIC 1382); and
- Oil and Gas Field Services, Not Elsewhere Classified (SIC 1389).

While the scope of TRI is defined in EPCRA using SIC codes, the SIC classification system has been largely superseded by the North American Industrial Classification System (NAICS), which EPA adopted for TRI purposes in 2006.⁴ Thus, it is important to note that the SIC-defined subsectors listed above correspond to the following NAICS sectors, in whole or in part:

- Crude Petroleum and Natural Gas Extraction (NAICS 211111);
- Natural Gas Liquid Extraction (NAICS 211112);
- Drilling Oil and Gas Wells (NAICS 213111);
- Support Activities for Oil and Gas Operations (NAICS 213112);
- Oil and Gas Pipeline and Related Structures Construction (NAICS 237120);
- Site Preparation Contractors (NAICS 238910); and
- Geophysical Surveying and Mapping Services (NAICS 541360)

By requesting that EPA extend the TRI reporting requirements to SIC 13, the Petition requested that EPA add to TRI the SIC codes 1311, 1321, 1381, 1382, and 1389, along with the relevant portion of each corresponding NAICS code.

To determine whether any or all of SIC 13 is appropriate for addition to TRI, it is useful not only to understand the oil and gas industry's sector classification but also the processes involved. According to EPA's *Profile of the Oil and Gas Extraction Industry*,⁵ the oil and gas extraction industry can be viewed as consisting of four major process steps:

- *Exploration* – Exploration involves the search for rock formations associated with oil or natural gas deposits, and involves geophysical prospecting and/or exploratory drilling.
- *Well development and completion* – Well development occurs after exploration has located an economically recoverable field, and involves the construction of one or more wells from the beginning (called “spudding”) to either abandonment if no hydrocarbons are found, or to well completion if hydrocarbons are found in sufficient quantities. During well development, the well is drilled using a drill bit in conjunction with drilling fluids, which often contain chemical additives, then cased to prevent the hole from caving in. Next, well completion occurs, which may involve such steps as testing, well casing perforation, well stimulation (including stimulation via hydraulic fracturing and/or acidizing), and production equipment installation.
- *Production* – Production is the process of extracting the hydrocarbons and separating the mixture of liquid hydrocarbons, gas, water, and solids, removing the constituents that are non-saleable, and selling the liquid hydrocarbons and gas. Production sites often handle crude oil from more than one well. Oil is nearly always processed at oil refineries, which are classified as manufacturing facilities (SIC 2911, Petroleum Refining; NAICS 324110, Petroleum Refineries) and are thus required to report TRI information to EPA. Natural gas

⁴ See 71 Fed. Reg. 32464 (Jun. 6, 2006).

⁵ “Profile of the Oil and Gas Extraction Industry,” EPA Office of Compliance Sector Notebook Project (Oct. 2000), available at <<http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/oilgas.pdf>>.

may be processed to remove impurities either in the field or at a natural gas processing plant. With limited exception,⁶ natural gas processing plants are not currently covered by the TRI reporting requirements.

- *Site abandonment* – Site abandonment involves plugging the well(s) and restoring the site when a recently-drilled well lacks the potential to produce economic quantities of oil or gas, or when a production well is no longer economically viable.

The Oil and Gas Extraction sector may also be viewed as consisting of well-level operations and non-well-level operations, the latter including refineries, natural gas processing plants, compressor stations, and booster stations.

B. Petition

To support its request that EPA add SIC 13 to TRI, the Petition points to three factors that EPA considered when it added six sectors to TRI in 1997:⁷

- *Chemical Factor* – Whether one or more toxic chemicals are reasonably anticipated to be present at facilities within the candidate industry group.
- *Activity Factor* – Whether facilities within the candidate industry group “manufacture,” “process,” or “otherwise use” these toxic chemicals.
- *Information Factor* – Whether facilities within the candidate industry group can reasonably be anticipated to increase the information made available pursuant to EPCRA section 313, or otherwise further the purposes of EPCRA § 313. This factor may include consideration of: (1) whether the addition of the candidate industry group would lead to reporting by facilities within that candidate industry group (*e.g.*, whether facilities within the candidate industry group would conduct activities which exceed the reporting thresholds in section 313(f)); (2) whether facilities within the candidate industry group were likely to be subject to an existing statutory or regulatory exemption from the requirement to file a Form R; (3) whether submitted Form R reports from that industry group could be expected to contain release and waste management data; or (4) whether a significant portion of the facilities in the industry group would be expected to file a Form A.⁸

The Petition argues that TRI coverage of SIC 13 would meet each of these factors. With respect to the chemical and activity factors, the Petition argues that TRI-listed chemicals are manufactured, processed, and/or otherwise used, as well as released to various environmental media, at oil and gas extraction facilities during each stage of the oil and gas extraction process. With respect to the information factor, the Petition contends that TRI coverage of SIC 13 would increase the information available to the public and further the purposes of EPCRA § 313, arguing that existing federal and state disclosure and

⁶ Manufacturing sector SIC 2819 (Industrial Inorganic Chemicals, Not Elsewhere Classified) includes facilities that manufacture “sulfur, recovered or refined, including from sour natural gas.” Office of Mgmt. & Budget, Exec. Office of the President, Standard Industrial Classification Manual (1987) (SIC Manual) at 135.

⁷ In 1997, 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 Fed. Reg. 23843 (May 1, 1997).

⁸ See 61 Fed. Reg. 33588, 33594 (June 27, 1996).

regulatory requirements are inadequate and that a significant number of oil and gas extraction facilities will meet the TRI reporting requirements and therefore submit TRI information to EPA.

C. Supplemental Materials

In support of the Petition, EIP also submitted additional materials on three separate occasions: communications dated January 30, 2014; May 1, 2014; and May 12, 2014.

1. January 30, 2014 Submission

On January 30, 2014, EIP submitted an analysis of oil and gas extraction sector emissions data found in the National Emissions Inventory (NEI) and six state inventories (CO, LA, ND, PA, TX, and WY). EIP argued that its analysis showed that 199 facilities in those six states reported annual air releases of a TRI-listed chemical in excess of 10,000 pounds for at least two consecutive years between 2008 and 2012. A significant portion of the facilities identified by EIP were either natural gas processing plants, booster stations, or compressor stations. Additionally, EIP contended in this submission that these 199 facilities, as well as others, are likely to meet the TRI reporting thresholds. Finally, EIP argued that TRI reporting by the oil and gas extraction sector would provide information of greater quantity, quality, and accessibility than state emissions inventories.

2. May 1, 2014 Submission

On May 1, 2014, EIP submitted a cover letter and a copy of a draft document titled “Task Force Report on FracFocus 2.0,” authored by the Secretary of Energy Advisory Board Task Force on FracFocus, dated February 24, 2014. In the cover letter, EIP summarized the “shortcomings and recommendations” offered by the Task Force with respect to FracFocus 2.0,⁹ stating that “[e]ach of these shortcomings and recommendations is a way in which TRI reporting is superior to FracFocus and a way in which TRI reporting by the oil and gas extraction industry will increase the information made available to the public.”¹⁰

3. May 12, 2014 Submission

On May 12, 2014, EIP submitted a cover letter and copies of five white papers prepared by EPA’s Office of Air Quality Planning and Standards, dated April 2014. These white papers included:

- “Oil and Natural Gas Sector Compressors”
- “Oil and Natural Gas Sector Hydraulically Fractured Oil Well Completions and Associated Gas during Ongoing Production”
- “Oil and Natural Gas Sector Leaks”
- “Oil and Natural Gas Sector Liquids Unloading Processes”
- “Oil and Natural Gas Sector Pneumatic Devices”

⁹ FracFocus is a national hydraulic fracturing chemical registry managed by the Ground Water Protection Council and Interstate Oil and Gas Compact Commission. FracFocus 2.0 is the second version of the registry. *See* <https://www.fracfocus.org>.

¹⁰ EIP submission dated May 1, 2014, Cover Letter at 2.

Notably, the cover page of each white paper contained the following statement: “This information is distributed solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. It has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency determination or policy.”

EIP contends in its cover letter that “these white papers further demonstrate that the oil and gas sector releases a great deal of toxic chemicals to the air throughout its various processes, making it an excellent candidate for addition to the TRI.”¹¹

II. EPA Response to Petition

A. General

In order to determine whether to grant the Petition, in whole or in part, EPA looked at each stage of the oil and gas extraction process and considered not only the chemical, activity, and information factors applied during EPA’s 1997 TRI sector addition, but also the extent to which existing and ongoing federal regulations, rulemakings, research, and other activities apply to the oil and gas extraction sector.

After considering these factors, the Petition, and the Petition supplements, EPA has determined that the appropriate course of action at this time is to propose adding natural gas processing facilities¹² to the scope of TRI, but to decline to propose adding the remainder of SIC 13.

B. GRANT, in part

EPA has determined that natural gas processing facilities may be appropriate for addition to the scope of TRI. According to a triennial survey of natural gas processing plants by the U.S. Energy Information Administration (EIA-757 survey), there were 517 natural gas processing plants in the lower 48 states as of 2012. EPA estimates that over half of these facilities would annually meet TRI reporting thresholds and, if covered by the reporting requirements of TRI, be required to submit TRI information to EPA. The information likely to be obtained from these facilities is not readily available elsewhere.

Applying the three factors that EPA considered in the 1997 TRI sector addition, the chemical factor and activity factor are met by most natural gas processing facilities: many TRI-listed chemicals are regularly manufactured, processed, or otherwise used at these facilities. Using information from Canada’s National Pollutant Release Inventory (NPRI), a program analogous to TRI and which covers natural gas processing plants, EPA estimates that natural gas processing facilities in the U.S. manufacture, process, or otherwise use more than 25 different TRI-listed chemicals. These chemicals include hydrogen sulfide, benzene, toluene, ethylbenzene, and xylene.

With respect to the information factor, 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. Unlike the remainder of

¹¹ EIP submission dated May 12, 2014, Cover Letter at 2.

¹² In the forthcoming rulemaking process to add natural gas processing plants to TRI, EPA anticipates providing additional detail as to the precise SIC/NAICS codes, or portions thereof, that will be proposed for addition.

this industrial sector (as discussed below), natural gas processing plants readily meet the statutory definition of “facility” at EPCRA § 329(4), 42 U.S.C. § 11049(4). Furthermore, based upon information submitted to Canada’s NPRI and the 2012 EIA-757 survey of natural gas processors, EPA expects that TRI reporting by U.S. natural gas processing facilities would provide significant release and waste management data.

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 uses of the data. 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-to-know foundations, TRI data are designed to be especially accessible and manipulable, and the systems that offer them to the public over the Web provide numerous analysis, download, and visualization tools.

As a result of these considerations, the Agency agrees with the portion of the Petition asking that EPA commence the rulemaking process to propose adding natural gas processing facilities to the scope of TRI.

C. DENY, in part

EPA agrees with Petitioners that numerous processes within the Oil and Gas Extraction sector are associated with significant quantities of TRI-listed chemicals. However, several factors lead EPA to decline to add this sector, with the exception of natural gas processing plants, to the scope of TRI at this time. As explained below, Petitioners have failed to adequately address the Agency’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). Additionally, as detailed more fully later in this response, EPA is currently engaging in a number of activities, including rulemaking, research, guidance, and other outreach, targeting the oil and gas extraction sector.

SIC 13 is unique in that many activities within the sector may manufacture, process, use, and/or release significant quantities of TRI-listed chemicals, yet the activities are often spread over a vast geographical area and require few employees to operate. Consequently, taking these activities at the smallest individual unit (individual well, compressor station, booster station, etc.), neither the employee nor the chemical thresholds are likely to be met on a regular basis. 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.

In the Petition, Petitioners contend that the case of *Sierra Club, Inc. v. Tyson Foods, Inc.*¹³ supports a broad interpretation of the definition of “facility,” as defined by EPCRA § 329(4), for TRI purposes. That case involved four chicken operations, each with numerous chicken houses. These houses, according to the facts of the case, were “generally 40 to 43 feet wide and 400 to 500 feet long and

¹³ *Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693 (W.D. Ky. 2003).

generally 50 to 60 feet apart.”¹⁴ The four “operations” “share[d] common access roads and interconnecting roads.”¹⁵ At issue in that case was, *inter alia*, whether each chicken *operation*¹⁶ constituted a single “facility,” as defined under EPCRA, or, alternatively, each chicken *house* on the single farm/operation constituted a single “facility.” In addressing this question, the court noted that EPCRA defines the term “facility” as follows:

The term “facility” means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.¹⁷

As Petitioners note, the court then concluded:

Each of defendants’ chicken production operations is a facility under this definition. The chicken production operations include multiple chicken houses that are located on single or adjacent sites within a concentrated area. These chicken houses are owned by the same person for purposes of producing chickens. Accordingly, each of defendants’ chicken production operations is clearly a facility under EPCRA from which ammonia releases must be reported on a site-wide basis.

For the reasons set forth above, the Court concludes that a whole chicken farm site is a facility under ... EPCRA for which releases must be reported.¹⁸

That is, the Court concluded that each chicken “house” was not a separate “facility,” but rather the chicken farm/operation constituted a single “facility.” As Petitioners note, the “plaintiff [in *Sierra Club, Inc. v. Tyson Foods, Inc.*] [did not] make the argument that the four *operations* should constitute a single facility under EPCRA.” Petition at 68, n.388 (emphasis added) (citation omitted).

Petitioners contend that this decision in *Sierra Club, Inc. v. Tyson Foods, Inc.* supports the notion that certain concentrations of oil and gas wells would also fit within the statutory definition of “facility” in EPCRA § 329(4). Specifically, Petitioners point to examples in Pennsylvania and Wyoming. Petitioners assert that, as of December 11, 2011, Cabot Oil & Gas Corporation owned and operated 137 wells in the municipality of Dimock, PA within a 3.59-mile radius, or approximately 40 square miles; that Talisman Energy owned and operated 174 wells in the municipality of Columbia, PA within a 4.64-mile radius, or approximately 67 square miles; and that EOG Resources owned and operated 122 wells in the municipality of Lawrence, PA within a radius of 3.1 miles, or approximately 30 square miles.¹⁹ Finally, Petitioners assert that in the Jonah Field Infill Drilling Project Area in Wyoming (Jonah Field), various companies owned and operated 2,323 wells within an area equivalent to approximately 32 square

¹⁴ *Id.* at 700.

¹⁵ *Id.*

¹⁶ The court used the term “operation” synonymously with the term “farm.” *See, e.g., Id.* at 711.

¹⁷ *Sierra Club* at 711, quoting EPCRA § 329(4), 42 U.S.C. § 11049(4).

¹⁸ *Sierra Club* at 711.

¹⁹ Petition at 68–69.

miles.²⁰ With 1,743 wells within Jonah Field, according to the Petition, Encana Oil and Gas USA, Inc., owned and operated the most wells within that area.²¹

Notably, however, the average distances between these oil and gas operations far exceed the “50 to 60 feet” separating the chicken houses in *Sierra Club, Inc. v. Tyson Foods, Inc.* Perhaps more importantly, in *Sierra Club, Inc. v. Tyson Foods, Inc.*, the chicken houses were clearly “located on single or adjacent sites . . . owned by the same person.”²² Onshore petroleum and natural gas production operations can be very diverse in arrangement, and are simply not analogous to a number of “chicken houses” located on a single farm with a single owner/operator.²³ Consequently, the *Sierra Club, Inc. v. Tyson Foods, Inc.* case does not support the broad interpretation of the term “facility,” as defined at EPCRA § 329(4), proposed by Petitioners.

Petitioners also contend that EPA could interpret the EPCRA definition of “facility” similarly to the “hydrocarbon basin” approach taken by EPA in the context of greenhouse gas reporting.²⁴ In that context, EPA promulgated via rulemaking the following definition of facility for purposes of greenhouse gas reporting under the CAA:

Facility with respect to onshore petroleum and natural gas production for purposes of reporting under this subpart and for the corresponding subpart A requirements means all petroleum or natural gas equipment on a single well-pad or associated with a single well-pad and CO2 EOR operations that are under common ownership or common control including leased, rented, or contracted activities by an onshore petroleum and natural gas

²⁰ *Id.* at 69.

²¹ *Id.* at 70.

²² *Id.* at 68, quoting *Sierra Club* at 711. Again, as Petitioners note, the “plaintiff [in *Sierra Club, Inc. v. Tyson Foods, Inc.*] [did not] make the argument that the four *operations* should constitute a single facility under EPCRA.” Petition at 68, n.388 (emphasis added) (citation omitted).

²³ See, e.g., U.S. Env'tl. Protection Agency, Greenhouse Gas Emissions Reporting from the Petroleum and Natural Gas Industry Background Technical Support Document (Docket I.D. No. EPA-HQ-OAR-2009-0923) at 19, available at http://www2.epa.gov/sites/production/files/2015-05/documents/subpart-w_tsd.pdf (“Onshore petroleum and natural gas production operations can be very diverse in arrangement. Sometimes crude oil and natural gas producing wellheads are far apart with individual equipment at each wellhead. Alternatively, several wells in close proximity may be connected to common pieces of equipment. Whether wells are connected to common equipment or individual equipment depends on factors such as distance between wells, production rate, and ownership and royalty payment. New well drilling techniques such as horizontal and directional drilling allow for multiple wellheads to be located at a single location (or pad) from where they are drilled to connect to different zones in the same reservoir. Therefore, the conventional facility definition of a ‘contiguous area’ under a common owner / operator cannot be easily applied to the onshore petroleum and natural gas production industry segment.”). See also, U.S. Env'tl. Protection Agency, Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation (40 CFR Part 112) (Docket I.D. No. EPA-HQ-OPA-2007-0584-0015) at 28 (May 30, 2007), available at <http://www.regulations.gov> (“Oil extraction and production facility owners do not necessarily own the land on which they operate a well and a tank battery. Many only lease the right to extract oil and gas from a given parcel of land. The relationship of the production facility to the land varies depending on who owns the minerals rights, i.e., whether a private citizen or a government entity (federal or state).⁶⁵ In either situation, the owner of the mineral resources may differ from the owner of the land above it. In exchange for extracting minerals, the lease owner (‘lessee’) pays royalties, and potentially also rentals and bonuses, to the mineral rights owner (‘lessor’).” (Footnote 66 omitted). Footnote 65 states: “Even on private lands, a private entity may own the surface while the government hold the rights to the oil and gas underneath. In such ‘split-estates,’ mineral rights are distinct from land ownership.”

²⁴ Petition at 70–72.

production owner or operator and that are located in a single hydrocarbon basin as defined in § 98.238. Where a person or entity owns or operates more than one well in a basin, then all onshore petroleum and natural gas production equipment associated with all wells that the person or entity owns or operates in the basin would be considered one facility.²⁵

Importantly, this term was not a statutorily-defined term under the CAA. Rather, EPA developed this regulatory definition based on its “broad authority to require emissions sources, persons subject to the CAA, manufacturers of process or control equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information as the Administrator requests for the purposes of carrying out any provision of the CAA.”²⁶

By contrast, entities subject to EPCRA § 313 reporting are limited to those that meet the EPCRA statutory definition of “facility” at EPCRA § 329(4), 42 U.S.C. § 11049(4). Petitioners’ argument that the broad “hydrocarbon basin” approach, which was developed in a wholly different statutory regime unconstrained by the EPCRA statutory definition of “facility,” should also apply to the EPCRA definition of “facility” fails to articulate how this approach squares with that statutory definition. Petitioners’ “hydrocarbon basin” argument is thus unavailing.

Finally, and of great significance to EPA’s consideration of this petition, EPA is already engaged in a wide array of rulemaking, guidance, research and other outreach activities targeting the oil and gas extraction sector. For example:

Research

- On June 4, 2015, EPA released the draft Assessment of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources for public comment and scientific peer review through EPA’s independent Science Advisory Board. *See* www.epa.gov/hfstudy. Congress urged EPA to conduct this study to better understand the factors and drivers that may affect the frequency and severity of potential impacts.

Air

- On August 16, 2012 the EPA finalized the first federal air regulations for natural gas wells that are hydraulically fractured (40 CFR part 60, subpart OOOO (2012 New Source Performance Standards (NSPS)), along with requirements for several other air emission sources in the oil and gas industry that were not regulated at the federal level. These other emission sources included:
 - Centrifugal and reciprocating compressors in production and processing;
 - Pneumatic controllers in production and processing;
 - Storage vessels; and
 - Equipment leaks at natural gas processing plants.

²⁵ 40 C.F.R. § 98.238. EPA further defined “basin” to mean “geologic provinces as defined by the American Association of Petroleum Geologists (AAPG) Geologic Note: AAPG-CSD Geologic Provinces Code Map: AAPG Bulletin, Prepared by Richard F. Meyer, Laure G. Wallace, and Fred J. Wagner, Jr., Volume 75, Number 10 (October 1991) (incorporated by reference, see § 98.7) and the Alaska Geological Province Boundary Map, Compiled by the American Association of Petroleum Geologists Committee on Statistics of Drilling in Cooperation with the USGS, 1978 (incorporated by reference, see § 98.7).” 40 C.F.R. § 98.238

²⁶ 75 Fed. Reg. 74458, 74460 (Nov. 30, 2010).

- On Jan. 14, 2015, EPA outlined a series of regulatory and non-regulatory steps the Agency plans to take to address methane and smog-forming volatile organic compound (VOC) emissions from the oil and gas industry. *See* www.epa.gov/airquality/oilandgas/pdfs/20150114fs.pdf.
- On July 31, 2015, EPA released a proposed framework for a new Methane Challenge Program which provides a platform for individual companies to set commitments to reduce methane emissions that can be publicly tracked and recognized. *See* www.epa.gov/gasstar/methanechallenge/. The Agency sought comment on the proposed framework and plans to finalize the program in late 2015.
- On August 18, 2015, the EPA Administrator signed proposed updates to the 2012 NSPS that build on the 2012 NSPS for the oil and gas industry to achieve additional reductions in methane and VOCs. *See* www.epa.gov/airquality/oilandgas/actions.html. That Proposed Rule was published for public comment in the Federal Register at 80 Fed. Reg. 56,593 (Sept. 18, 2015). This action expands the 2012 NSPS to cover greenhouse gases (GHG) – methane – from sources already covered by VOC standards. These updates also add methane and VOC standards for some currently unregulated sources, including:
 - Hydraulically fractured oil wells;
 - Fugitive emissions (leaks) from well sites and compressor stations;
 - Pneumatic pumps;
 - Centrifugal and reciprocating compressors in transmission and storage; and
 - Pneumatic controllers in transmission and storage.
- On August 18, 2015, EPA issued draft Control Techniques Guidelines that are intended to help states identify and promote reasonably available control technology to achieve VOC reductions from existing sources in ozone nonattainment areas (classified as moderate and above) and in the Ozone Transport Region in the Northeast. *See* www.epa.gov/airquality/oilandgas/pdfs/og_ctg_draft_081815.pdf. That document was published for public comment in the Federal Register at 80 Fed. Reg. 56,577 (Sept. 18, 2015).
- EPA has two complementary efforts underway to characterize and improve our understanding of GHG emissions from the oil and gas sector: EPA’s Inventory of U.S. Greenhouse Gas Emissions and Sinks (US GHG Inventory) (*see* www.epa.gov/climatechange/ghgemissions/); and EPA’s Greenhouse Gas Reporting Program (GHGRP) (*see* www.epa.gov/ghgreporting/).

Water

- On February 5, 2014, EPA issued an interpretive memorandum specific to the use of diesel fuels in hydraulic fracturing. *See* <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/signedmemohfactivitiesusingdieselfuels.pdf>. The memorandum defines diesel fuels and explains how hydraulic fracturing with diesel fuels is subject to Class II injection well regulations.
- In February, 2014, EPA released its final permitting guidance specific to oil and gas hydraulic-fracturing activities using diesel fuels under the Safe Drinking Water Act’s Underground Injection Control program. *See* <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/epa816r14001.pdf>. The guidance is designed to assist regulators, which could include EPA, States and tribes, responsible for issuing permits and/or updating regulations for hydraulic fracturing in protecting underground sources of drinking water and public health wherever hydraulic fracturing occurs.

- On February 6, 2015, EPA released the EPA-State Underground Injection Control (UIC) National Technical Workgroup (NTW) report, *Minimizing and Managing Potential Impacts of Injection-Induced Seismicity from Class II Disposal Wells: Practical Approaches*. See www.epa.gov/r5water/uic/ntwg/pdfs/induced-seismicity-201502.pdf. This report was developed cooperatively with states to help protect underground sources of drinking water by reducing the potential for induced seismicity.
- On April 7, 2015, EPA published proposed revisions to technology-based effluent limitations guidelines (ELGs) for onshore oil and gas extraction facilities (40 CFR Part 435). The proposed regulations would establish pretreatment standards for discharges of wastewater pollutants from onshore unconventional oil and gas (UOG) extraction facilities to publicly-owned treatment works (POTWs). See 80 Fed. Reg. 18557 (Apr. 7, 2015). For additional information, see the rulemaking website: <http://water.epa.gov/scitech/wastetech/guide/oilandgas/unconv.cfm>.
- EPA is conducting a study of privately owned centralized waste treatment (CWT) facilities that accept oil and gas extraction wastewater. EPA is soliciting data and information related to the extent to which CWT facilities accept such wastewater, available treatment technologies (and their associated costs), discharge characteristics, financial characteristics of CWT facilities, the environmental impacts of discharges from CWT facilities, as well as any other information believed to be relevant to EPA's study of this issue. For additional information, see: <http://water.epa.gov/scitech/wastetech/guide/cwt/index.cfm#study>.

Chemicals

- On May 19, 2014, in an Advance Notice of Proposed Rulemaking pursuant to the Toxic Substances Control Act (TSCA), EPA announced that it was seeking public comments on the information that could be disclosed, under TSCA, on hydraulic fracturing chemicals and mixtures and the possible regulatory and non-regulatory approaches for obtaining this information. See 79 Fed. Reg. 28664 (May 19, 2014). The Agency is currently reviewing comments and considering next steps.

Waste Management

- Under the current regulatory structure, states have the primary role of regulating oil and gas Exploration and Production (E&P) wastes under their non-hazardous (or, in some instances, state oil and gas) programs. EPA has provided guidance to states regarding the exempt or non-exempt status of specific E&P wastes (e.g., EPA's *Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations*, October 2002, EPA530-K-01-004, also known as the *Green Book* (see <http://www.epa.gov/wastes/nonhaz/industrial/special/oil/oil-gas.pdf>). Also, to provide a resource for policy makers, operators and the public, in 2014 the EPA's Office of Solid Waste and Emergency Response (OSWER) updated its waste-specific website to reflect updated information on waste management for wastes generated from E&P activities, including unconventional oil and gas (UOG) activities. See www.epa.gov/epawaste/nonhaz/industrial/special/oil/hydrofrac.htm.

Emergency Management

- In 2011, EPA updated its guidance to the "upstream sector" on how the Spill Prevention, Control, and Countermeasure rule (SPCC) can apply to facilities (including oil production) in order to prevent oil discharges from reaching the waters of the U.S. or adjoining shorelines. See <http://www2.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-spc-0>.

- In January, 2014, EPA issued an *Interim Chemical Accident Prevention Advisory: Design of [Liquified Petroleum Gas (LPG)] Installations at Natural Gas Processing Plants* to raise industry awareness of codes and standards that may be applicable at such facilities. See <http://www2.epa.gov/rmp/interim-chemical-accident-prevention-advisory-design-lpg-installations-natural-gas-processing>.

III. Conclusion

For the reasons discussed above, EPA hereby GRANTS, in part, the Petition insofar as it requests that EPA commence the rulemaking process to propose adding natural gas processing facilities to the scope of TRI.²⁷ Also for the reasons discussed above, EPA hereby DENIES the remainder of the Petition.

Dated:

Oct 22, 2015



Gina McCarthy
Administrator

²⁷ See note 12, *supra*.