



EPA Issues Package of Proposed Rules to Reduce Methane Emissions from the Oil and Gas Sector

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On August 18, 2015, the Environmental Protection Agency (EPA) issued a [package of proposed rules](#) aimed at limiting emissions of methane and other pollutants from sources in the oil and gas sector. The proposals are the latest actions under a [comprehensive methane strategy](#) for the sector released by the White House in January of this year. The White House's goal is to reduce methane emissions from the sector by 40-45 percent from 2012 levels by 2025.

As explained below, the August 18 package mostly targets new and modified sources in the sector. However, the agency has proposed various mechanisms that would extend federal and state regulation to some existing sources. In addition, EPA is supplementing these regulatory proposals with a new voluntary program under which oil and gas companies would make and track ambitious near-term commitments to reduce emissions from their existing facilities.

Proposed New Source Performance Standards for New, Modified, and Reconstructed Sources in the Oil and Gas Sector

The first proposed rule, issued under section 111(b) of the Clean Air Act, would establish New Source Performance Standards (NSPS) for emissions of methane and volatile organic compounds (VOCs) from certain new, modified, and reconstructed equipment, processes, and activities in the production, gathering, transmission and storage segments of sector. This proposal would amend a [2012 NSPS rule that only covers emissions of VOCs](#) (2012 NSPS rule) by adding the new methane limits and extending applicability of both the methane limits and the VOC limits to a broader set of sources.

Generally, EPA proposes that the "best system of emission reduction" (BSER) for methane for sources already subject to the 2012 NSPS rule is the same as the BSER established in the 2012 NSPS rule for VOCs—because controls that reduce VOCs from those sources also reduce methane. Therefore, a new, modified, or reconstructed source that would be subject to VOC limits under the 2012 NSPS rule would not need to install additional or different controls under the proposed revision.

However, EPA also proposes VOC and methane limits for sources that would not have been covered by the 2012 NSPS rule. The proposed revisions would require hydraulically-fractured *oil* wells to meet the same requirement for "green completions" as currently applies to *gas* wells. In addition, the proposed revisions would set limits on methane and VOCs emitted by new and modified pneumatic pumps (which are used throughout the regulated segments of the sector), and also from compressors and pneumatic controllers used at transmission compressor stations and storage facilities. Finally, the proposed revisions would require owners and operators of new, modified, and reconstructed equipment throughout the relevant segments to undertake Leak Detection and Repair (LDAR) regimes.

Although the proposed revisions to the NSPS rule only would cover new, modified, and reconstructed sources, some observers believe that once EPA finalizes the NSPS rule, section 111(d) of the Clean Air Act will require the Agency to follow up with a rule regulating existing sources of methane in the sector. However, even if that is so, [case law](#) suggests that EPA has discretion as to the timing and prioritization of such a rule, at least in the near term.

Comments are due on the proposed NSPS rule 60 days after it is published in the *Federal Register*.

Draft Control Techniques Guidelines for the Oil and Natural Gas Sector

In its second action, EPA proposes to use its Clean Air Act authorities for requiring VOC reductions in certain ozone nonattainment areas to achieve methane emission reduction co-benefits.

EPA has issued draft Control Techniques Guidelines (CTG) for existing sources of VOCs in the oil and gas sector. As discussed above, techniques to reduce VOCs in certain segments of the sector also reduce methane emissions.

Under its Clean Air Act authorities to address ozone, EPA may issue a CTG, which provides recommendations for states to consider when establishing reasonable available control technology (RACT) emission standards for existing sources of ozone “precursors,” including VOCs. A state may adopt a different RACT standard than the approach outlined in the CTG but bears the burden of demonstrating that its alternative policy is as at least as effective.

The proposed CTG includes recommended RACT standards that are generally consistent with those established by the proposed NSPS rule for new and modified units, but would apply those standards to existing sources.

However, the CTG does not apply to the full universe of existing sources in the sector. First, because VOCs are largely removed in the processing segment of the sector, the draft CTG does not reach equipment in the transmission and storage segments, which do not have meaningful VOC emissions (with the exception of storage vessels). In addition, the proposed CTG has a limited geographic reach. A CTG only applies in ozone nonattainment areas rated “moderate” or worse, and in nonattainment areas in the Northeast’s Ozone Transport Region (which encompasses the Marcellus and Utica shale formations). However, EPA has [proposed to tighten the ozone standard](#), which eventually would drive more areas of the country into “nonattainment” status.

EPA proposes to require states to submit revisions to their State Implementation Plans consistent with the CTG within 2 years of issuance of the final CTG.

Comments are due on the draft CTG 60 days after it is published in the *Federal Register*.

Proposed Source Determination for Certain Emissions Units in the Oil and Natural Gas Sector

EPA has proposed certain amendments to its Nonattainment New Source Review (NNSR), Prevention of Significant Deterioration (PSD), and Title V regulations that potentially would make it easier for the Agency to apply more stringent emission controls to a broader range of activities in the oil and gas sector.

Under the Clean Air Act, the NNSR, PSD and Title V provisions apply to new or modified stationary “sources” that have emissions in excess of certain statutory thresholds. Such sources are deemed “major sources.” The NSR and PSD programs subject new and modified “major sources” to extensive pre-construction permitting obligations and stringent emission control requirements. In effect, the proposed amendments could make it possible for EPA to treat more existing sources in the sector as new and modified major sources for purposes of the NNSR and PSD programs.

EPA’s current regulations interpret the term “source” for each of these three programs to allow aggregation of separate facilities and other equipment as a single “source” only if they meet three conditions. They must: (1) share the same SIC code; (2) be under common control; and (3) be “contiguous or adjacent.” Under the proposed rule, EPA is requesting comment on this third condition, i.e., how the term “adjacent” should be applied to emission units in the oil and gas sector (albeit only for onshore operations).

EPA is co-proposing two options. The Agency’s “preferred” option would consider two or more surface sites “adjacent” if they are located within a distance of a ¼ mile. Further, the preferred option would specify that the geographic center of a site’s emissions defines the center for purposes of establishing the ¼ mile distance. This second condition would preclude “daisy-chaining,” which occurs when each

individual unit is located within the specified “adjacent” distance from the next unit, but the last unit is separate from the first unit by a very large distance.

Under the second option, EPA would presume that equipment in an oil and gas field is “adjacent” if it is proximate (located within a distance of less than a ¼ mile) or if it is “exclusively functionally interrelated.” The latter condition could be shown through a physical connection, such as a pipeline. The second option would appear to allow EPA to aggregate even relatively distant units as a single source, provided that they are linked by a pipeline or have some other functional tie.

Proposed Federal Implementation Plan for Implementing the Indian Country Minor NSR Program for Oil and Gas Production Sources

EPA has also proposed a rule that would affect preconstruction permitting for certain new and modified oil and gas production and gathering sources locating in Indian Country. Under this proposal, EPA would establish a uniform general permit for certain new and modified “minor” sources in this category. (A “minor” source is a source with a potential to emit one or more regulated pollutants at a level that is below the threshold for a “major” source but above a certain minimum threshold.) The proposed general permit would incorporate emission limits established by six federal rules, including the proposed revised NSPS rule discussed above. Owners and operators of such sources could elect to forgo the general permit in favor of a site-specific permit. However, EPA asserts that its standardized approach will help streamline permitting for most sources.

Comments are due on the proposed rule 60 days after it is published in the *Federal Register*.

Proposed Framework for the Natural Gas STAR Methane Challenge Program

As a complement to the above package of proposed regulations that are mostly aimed at new and modified sources in the sector, EPA has proposed a new mechanism through which companies could make and track voluntary commitments to reduce methane emissions from their *existing* sources.

On July 23, 2015, EPA issued its proposed framework for a new [Natural Gas STAR Methane Challenge Program](#) (the “Methane Challenge Program”). The Methane Challenge program would allow companies to choose from two options for adopting and implementing an emission reduction commitment: the Best Management Practices (BMP) Commitment Option and the ONE Future Emissions Intensity Commitment Option.

A company adopting the BMP Commitment would commit to company-wide implementation of certain EPA-specified BMPs at one or more EPA-specified sources (e.g., for all venting centrifugal compressors, route wet seal de-gassing vent to capture, use, or flare).

A company adopting the ONE Future Emission Intensity Commitment would commit to achieving a particular segment-specific emissions rate level on an aggregate basis for all of the sources it owns in that sector. ONE Future is an existing industry program administered by ONE Future, Inc.

EPA has announced a goal of finalizing and launching the Methane Challenge program by the end of 2015.

Comments are due on the proposed framework for the Methane Challenge Program by October 13, 2015.

For more information

Van Ness Feldman is available to provide counsel to companies and other as they assess the implications of these proposals for their operations and prepare to submit comments to EPA. Please contact [Kyle Danish](#), [Stephen Fotis](#), or any other professionals in Van Ness Feldman’s [Environmental](#) Practice for additional information on the analysis or on other matters related to these rules.

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