



Obama Administration Seeks to Cut Methane Emissions

On January 14, 2015, the Obama Administration (“Administration”) and the Environmental Protection Agency (“EPA”) announced their plan to propose standards to control methane emissions from new and modified oil and natural gas production sources.¹ The future regulation—which represents part of the Administration’s Climate Action Plan Strategy to Reduce Methane Emissions (“Climate Action Plan”)²—will be proposed under § 111(b) of the Clean Air Act (“CAA”) and is projected to reduce methane emissions by up to 45 percent by 2025, as compared to 2012 levels. The EPA plans to issue the proposed regulations in the summer of 2015, with the rule to be finalized by 2016.

Justification for the Proposed Rule

After proposing the Clean Power Plan to limit carbon emissions from existing electric generating units (“EGUs”),³ the EPA intends for this new methane standard to serve as the next step in reducing overall greenhouse gas (“GHG”) emissions. The EPA estimates that methane emissions accounted for nearly 10 percent of GHG emissions in the United States in 2012, while noting that methane possesses 25 times the heat-trapping potential of carbon dioxide over a 100-year period. Without new measures to control methane emissions, the Administration projects that

methane emissions will increase by more than 25 percent by 2025.

Despite the EPA’s projections, industry stakeholders will almost certainly object to the EPA’s proposed rule. Within its own statements on the methane proposal, the EPA acknowledges that more than 70 percent of methane emissions are produced by sources *outside* the oil and natural gas sector. Additionally, while natural gas production has risen by 37 percent since 1990, methane emissions within the oil and natural gas sector have dropped by 16 percent since that time.

2012 New Source Performance Standards

The EPA suggests that its new methane regulation would update the 2012 new source performance standards (“NSPS”) that it promulgated to cut volatile organic compound (“VOC”) emissions from oil and natural gas wells, storage tanks, and other equipment.⁴ In promulgating these NSPS, the EPA claimed the NSPS “would yield a significant environmental co-benefit by reducing methane emissions from new and modified wells,”⁵ and it estimated that the NSPS would “decrease methane emissions in an amount equivalent to 33 million tons of carbon pollution per year.”⁶

Based on the EPA's estimates regarding the 2012 VOC NSPS, skepticism exists as to whether a methane regulation is needed for the oil and gas sector. However, the Administration notes that the 2012 NSPS do not directly regulate methane emissions from new and modified sources in the oil and natural gas sector. Thus, a new standard would build upon—and not duplicate—the 2012 NSPS. The EPA further notes that any new methane regulation will not conflict with requirements that states have implemented to regulate emissions from the oil and natural gas sector.

Proposed Framework

The EPA's proposed methane regulation adds to the existing portfolio of regulatory measures that already comprise the Administration's Climate Action Plan. The future rulemaking will be modeled on a series of peer-reviewed white papers that the EPA released in 2014.⁷ Those white papers focus on technical issues covering emissions and mitigation techniques that target methane and VOC emissions, with a particular focus on compressors, leaks, liquids unloading, pneumatic devices, and emissions from completions and ongoing production of hydraulically fractured oil wells. The future regulation will focus on reducing methane emissions from new and modified sources by utilizing "in-use technologies, current industry practices, emerging innovations, and streamlined and flexible regulatory approaches."⁸

While the future standards for methane emissions will apply directly to new and modified—but not existing—sources in the oil and natural gas sector, a series of other current and future initiatives within the Administration's Climate Action Plan seek to regulate methane emissions from new and/or existing facilities. For instance, the following strategies will be carried out by various agencies and departments in an attempt to curb methane emissions across the industry:

- The EPA will develop and extend VOC requirements to areas deemed as needing air quality improvement, including areas designated as nonattainment under the National Ambient Air Quality Standards ("NAAQS") and states in the Ozone Transport Region.⁹ The EPA will issue

Control Techniques Guidelines to states, which will outline cost-effective control technologies for VOC emissions as part of state plans to comply with the NAAQS.

- The U.S. Department of Energy will encourage reduced emissions, particularly from natural gas transmission and distribution systems. The agency will accelerate pipeline repair at the local level, improve the natural gas infrastructure, and reduce leaks from natural gas transmission systems. President Obama's 2016 budget is projected to include \$25 million in funding to the Department of Energy to assist with these efforts.
- The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration will propose three separate rulemakings in 2015 concerning natural gas. The rules will focus on pipeline safety, while aiming to lower methane emissions.
- The U.S. Bureau of Land Management will update standards to reduce wasteful venting, flaring, and leaking of natural gas from new and existing oil and natural gas wells on public lands.
- The EPA plans to expand the Natural Gas STAR Program¹⁰ to support ongoing voluntary methane reduction efforts. The EPA intends to launch a new partnership with stakeholders in 2015, with plans to develop a monitoring, reporting, and verification system.

Pathway to Regulating Existing Sources?

Although existing sources will not be directly regulated by the upcoming rulemaking, the proposed standard is likely to trigger future rulemaking obligations in regard to existing sources of methane emissions.

The EPA intends to propose its future methane standards under CAA § 111(b)—a section under which methane emissions from oil and natural gas wells have not previously been regulated. The EPA has not indicated whether it will rely on its 2009 Endangerment Finding¹¹ to support the prospective direct regulation of methane emissions or whether it will issue a new endangerment finding that specifically declares that methane emissions may reasonably be anticipated to endanger public health or welfare. In either case, the EPA's decision

regarding the endangerment finding will remain an interesting issue to monitor as the future methane standards develop.

Notably, CAA § 111(d) requires states to establish standards of performance for any source for which the EPA has adopted new source performance standards (i.e., under § 111(b)). Although the EPA declined to comment on whether its proposed methane rule would necessitate existing source standards under § 111(d), it relied on § 111(d) to justify its authority to regulate CO₂ from existing EGUs when it promulgated the Clean Power Plan. Thus, it appears that a methane regulation for new and modified sources could lead to the EPA proposing a subsequent measure to address existing methane sources.

Overall, the costs, effects, and implementation date of this proposal on the oil and natural gas sector will be unknown until the EPA publishes its proposed rule. However, it is clear that the regulation will have a significant long-term impact if it leads to the regulation of existing sources.

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Endnotes

- 1 Details of the plan are discussed in two separate fact sheets released by the Administration and the EPA on January 14, 2015. The EPA's fact sheet can be viewed at: <http://www.epa.gov/airquality/oilandgas/pdfs/20150114fs.pdf> (hereinafter “EPA Fact Sheet”). The Administration's fact sheet can be viewed at: <http://www.whitehouse.gov/the-press-office/2015/01/14/fact-sheet-Administration-takes-steps-forward-climate-action-plan-anno-1> (hereinafter “White House Fact Sheet”).
- 2 See http://www.whitehouse.gov/sites/default/files/strategy_to_reduce_methane_emissions_2014-03-28_final.pdf.
- 3 79 Fed. Reg. 34830 (June 18, 2014).
- 4 77 Fed. Reg. 49490 (Aug. 16, 2012) (establishing NSPS for 40 C.F.R. Part 60, Subpart OOOO).
- 5 See EPA Fact Sheet.
- 6 See White House Fact Sheet.
- 7 See <http://www.epa.gov/airquality/oilandgas/whitepapers.html>.
- 8 See White House Fact Sheet.
- 9 For more information on nonattainment designations and the Ozone Transport Region, see <http://www.epa.gov/air/urbanair/sipstatus/nonattainment.html>.
- 10 The Natural Gas STAR program is a voluntary partnership that encourages oil and natural gas companies to adopt cost-effective technologies and practices that improve operational efficiency and reduce emissions of methane. See <http://www.epa.gov/gasstar/>.
- 11 74 Fed. Reg. 66496 (Dec. 15, 2009).

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