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RAILROAD COMMISSION OF TEXAS
EXECUTIVE OFFICE

December 3, 2015

Janet McCabe, Acting Assistant Administrator
U.S. Environmental Protection Agency
Office of Air and Radiation Mail Code: 6101A
1200 Pennsylvania Avenue, NW
WJCN Room 5406
Washington, D.C. 20460 *Overnight Mail*

Attn: Docket ID No. EPA-HQ-OAR-2013-0685

Re: Comment on Proposed Rules: "Source Determination for Certain Emission Units in the Oil and Gas Sector," 80 Fed. Reg. 56,579 (September 18, 2015), Docket ID No. EPA-HQ-2013-0685

Dear Acting Assistant Administrator McCabe:

On behalf of the Railroad Commission of Texas, I am pleased to offer the following comments on the above referenced proposed regulations.

The Railroad Commission of Texas (Commission) has effectively regulated the oil and natural gas industry in the State of Texas since 1919. The Railroad Commission's primary statutory responsibilities in the regulation of Texas oil, gas and geothermal resources are to conserve the State's natural resources; prevent the waste of natural resources; protect the correlative rights of different interest owners; protect the environment from pollution associated with oil, gas and geothermal activity; and ensure safety in areas such as hydrogen sulfide. The Railroad Commission works closely with the Texas Commission on Environmental Quality, which has primary jurisdiction over air emissions for the purposes of safeguarding the State's air resources.

Texas is the nation's largest producer of oil and natural gas with, as of September 2015, over 190,000 regular producing oil wells and over 100,000 regular producing gas wells. This energy production supports 2 million jobs in Texas and a quarter of the State's economy. The industry benefits Texas and the entire United States. Nationally, the energy industry supports 9.2 million jobs, providing billions of dollars in employee wages. Because Texas' oil and gas industry is the largest in the nation, our state will be disproportionately impacted by these proposed rule changes.

This Commission agrees with the comments of its sister agency, the Texas Commission on Environmental Quality (TCEQ), and particularly emphasizes the following.

EPA is proposing two options for determining whether two or more properties in the oil and natural gas sector are "adjacent." Both options raise significant implementation issues that will result in an overly broad aggregation policy and actually create uncertainty by bogging down the permit review process, transforming minor sources to major sources, usurping state authority to review and regulate what would otherwise be minor sources, and failing to take into account the realities of oil and gas operations.

The Commission joins TCEQ in opposing option one. Option One relies solely only on proximity as the determinative factor for defining the term "adjacent", requiring aggregation of oil and gas sources that are within ¼ mile of each other.[1] EPA points to guidance developed independently by Texas, Pennsylvania, Oklahoma, and Louisiana as the basis for this preferred option. While Texas does have guidance for site aggregation for the Title V program, the Commission does not support the establishment of a "bright-line" distance of one-quarter mile (or one-half mile) in rule within which to consider multiple sites as a single source. EPA misinterprets TCEQ's guidance as establishing a bright-line within which all sites are deemed a single source. This guidance merely provides the flexibility necessary to aggregate sources where circumstances require. Setting a specific distance in rule takes that flexibility away. Adopting in rule any specific distance between sources for purposes of aggregating the sources, without consideration of how those sources function together, is arbitrary and capricious and furthermore does not "approximate a common sense notion of 'plant'" nor "fit within the ordinary meaning of 'building,' 'structure,' 'facility,' or 'installation'."[2]

Texas has a statute specifically addressing aggregation of oil and gas minor sources. Texas Health and Safety Code [THSC] section 382.051964 allows aggregation of oil and gas production facilities under permit by rule (PBR) or standard permit (SP) that meet four criteria. The facilities must be under common control, under the same first two-digit major grouping of Standard Industrial Classifications, less than one quarter mile from each other, and operationally dependent (discussed further below). This conjunctive approach ensures that only those sources that are operationally dependent are aggregated as one source, which is consistent with federal law, the common sense notion of "plant" and the plain meaning of the term "adjacent." The proposed new federal rule will deprive the states of the flexibility to develop and apply appropriate guidance and state law that best comports with the activities in their respective state. The Commission asserts that Option One is arbitrary, capricious, unnecessary, unduly burdensome and overreaching.

The Commission also opposes Option Two, which would consider facilities beyond ¼ mile that are exclusively functionally interrelated as a basis for adjacency. As examples, EPA suggests that exclusive functional interrelatedness could include connection via pipeline, delivery via truck or train, and facts such as whether one group of equipment would be able to operate if the other group of equipment was not operating.[3] The Commission does not support such a broad and misguided application of this concept.

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[1] Source Determination for Certain Emission Units, 80 Fed. Reg. at 56586-7

[2] Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans (PSD Rule); 45 Fed. Reg. 52676, 52695 (August 7, 1980).

[3] Source Determination for Certain Emission Units, 80 Fed. Reg. at. at 56587/3.

As the Commission understands TCEQ's regulations, Texas regulates small oil and gas sources through its minor source permitting program applying stringent control requirements appropriate for this source type. The vast majority of oil and gas sources are authorized under Permits By Rule (PBRs) or Standard Permits (SPs). The controls required under these authorizations are appropriate to the equipment at the facility or site and are developed to be protective of public health.

Furthermore, oil and gas facilities must comply with many other applicable state and/or federal standard(s). Many of the sites authorized using PBRs and SPs already utilize flares, vapor recovery units (VRUs), and/or other collection/combustion devices to control and collect emissions to comply with the existing state and federal regulations. Therefore, aggregation of these sites would not result in lower emissions. For example, NSPS OOOO applies to most oil and gas sites constructed, modified, or reconstructed after August 23, 2011,[4] and as such the sites may be required to control storage vessel emissions based on their potential to emit. Since these control requirements are on a per tank basis,[5] EPA's proposal would result in aggregation of these sites, but would not result in any increase in the number of facilities being controlled or any reduction in emissions. The practical result is that the aggregated sites would be subject to an unnecessary and more onerous, time consuming, and less predictable permitting process, stalling growth and production without any environmental or health benefit.

In addition, by subjecting minor oil and gas sources to federal permitting requirements, these sources may also be subject to the control of GHG emissions as well. In the *UARG v. EPA*[6] opinion that severely restrained EPA's efforts to regulate GHG emissions through PSD and Title V under the GHG Tailoring Rule, the Supreme Court ruled that PSD can only apply to so-called "anyway" sources, i.e., those sources that triggered PSD controls for conventional pollutants.[7] This rulemaking is an overreach by EPA that unnecessarily subjects the oil and gas production industry to GHG regulation.

Additional complications from EPA's proposal will occur given the common industry practice of frequently buying and selling sites and facilities due to market conditions (from local to global), the capitalization of the operator, the maturity of the well and the oilfield, the expertise of the operator in production, and other practical business and economic realities. Historically, as these individual Minor Sources have not been required to be aggregated into a single site simply based on proximity, the process of documenting a change of ownership is accomplished quickly without the need to reevaluate the underlying authorization.

However, if the proposed aggregation language is accepted without change, there is the scenario to consider where one piece of a large, aggregated site is sold to another company. This previously simple change can result in the need for a new Major Source permit, or an

[4] Oil and Gas: Emission Standards for New and Modified Source Performance Standards, 77 Fed. Reg. 49490 (August 16, 2012).

[5] On August 12, 2015, EPA finalized amendments to the storage vessel requirements removing provisions concerning storage vessels connected or installed in parallel. 80 Fed. Reg. 48262.

[6] *Utility Air Regulatory Group (UARG) v. EPA*, 134 S.Ct. 2427 (2014).

[7] *UARG* at 2449.

amendment to an existing Major Source permit, each involving a full federal review (revised impacts review, modeling, etc.) with no additional benefit to human health and the environment. Additionally, under either option, sources could move in and out of Major Source requirements simply due to, for example, unrelated facilities in close proximity, or the sale or purchase of adjacent wells. This result, in and of itself, may make environmental permitting the more dominant factor in decisions to sell or purchase oil and gas assets. Regardless, questions will arise regarding the level of emission controls, reporting, and recordkeeping required for the remaining sources, which will only require new applications, leave source determinations in a constant state of flux, and create an unreasonable and unnecessary level of regulatory uncertainty for industry. Again, a simple change that takes very little time to process now becomes one that can take up to a year if not more if the proposed aggregation requirements are adopted.

Finally, the stated policy reasons for this rule's focus on the oil and gas sector are wrong. First, EPA claims that this industry sector should be looked at separately from all other sectors, "....because permitting decisions are difficult and time-consuming. Providing this guidance will promote a consistent regulatory treatment for this industry."[8] In Texas, the TCEQ has developed streamlined permitting mechanisms for minor sources and the oil and gas sector specifically that reduce review timeframes significantly. The Commission and TCEQ do not agree that permitting decisions for this industry are more difficult and time consuming than any other industry sector. EPA states that one potential outcome of aggregating oil and gas sources is to create major sources, thus requiring more stringent BACT-based controls on emissions. Texas already authorizes oil and gas minor sources applying stringent control requirements for these types of sources. In addition, by EPA's own admission, a better approach to controlling emissions from this sector is through the NSPS or NESHAP programs, and in ozone nonattainment areas, control techniques guidelines (CTGs).[9] These programs do not rely on an expansive definition of a source for applicability, thus they will typically apply to minor sources.

The EPA should abandon this source determination rule for Major New Source Review and Title V. Because many of the sources that would be affected by this change in definition are minor sources, EPA should allow states to utilize their existing processes and guidance and develop additional guidance and policies that best fit their state. This approach would afford states the deference to which they are entitled to administer their minor source programs in accordance with their SIP-approved programs. Texas' recommendation is for EPA to retain the existing definition and interpretation of adjacency, allow states to maintain applicable minor source programs as provided under the FCAA as Texas has done, and further allow the states to develop and adopt appropriate major source guidance for PSD and NNSR programs and the Title V programs. This approach would be consistent with the plain meaning of the term and common sense notion of plant, taking into account the physical, operational, and regulatory realities of oil and gas operations across the country.

Thank you for the opportunity to comment on these proposed rules. It is this Commission's hope that EPA will retain the regulatory flexibility of the states under the current rules and abandon

[8] Source Determination for Certain Emission Units, 80 Fed. Reg. at at 56585

[9] *Id*

the proposed arbitrary, capricious, overly burdensome and unnecessary one-size-fits-all approach.

Sincerely,

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