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EPA Proposes to Require Natural Gas Processing Facilities to Comply with Annual Toxic Release Inventory Reporting Requirements

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On January 6, 2017, EPA proposed to add natural gas processing (NGP) facilities to the list of industry sectors subject to Toxic Release Inventory (TRI) reporting requirements.[1] EPA is accepting comments on the proposal through March 7, 2017, although the future of the proposal in the Trump Administration is uncertain.

EPA's listing proposal is in response to a petition for rulemaking filed in 2012 by the Environmental Integrity Project and other organizations, requesting that EPA add all upstream oil and gas operations to the list of industry sectors covered by the TRI program. The groups sued EPA in 2015 to force action on the rulemaking petition. On October 22, 2015, EPA denied the petition with respect to most upstream facilities, but granted the petition with respect to NGP facilities and agreed to "commence the rulemaking process to propose adding natural gas processing facilities to the scope of TRI." [2] The groups subsequently dismissed the case.

TRI Program Background

Established by Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), the TRI program requires facilities with 10 or more full-time employees in listed industry sectors that manufacture, process, or otherwise use certain chemicals in excess of established thresholds to annually submit detailed information regarding emissions and other releases of those chemicals.[3] The TRI program does not impose any emission or release restrictions, but EPA uses the information gathered to inform its implementation of other environmental programs and to establish its compliance inspection and enforcement priorities.

The Proposal To Add NGP Facilities

EPA proposes to include the "Natural Gas Liquid Extraction" industry, which is North American Industry Classification System (NAICS) code 211112, in the list of industry sectors subject to TRI reporting requirements.[4] In the proposal, EPA describes these facilities as "stationary surface facilities that receive gas from a gathering system that supplies raw natural gas from many nearby wells ... [and] prepare natural gas (composed primarily of methane) to industrial or pipeline specifications and extract heavier liquid hydrocarbons from the raw or field natural gas.[5]

EPA specifically states that the proposal is not intended "to add to TRI coverage natural gas field facilities that only recover condensate from a stream of natural gas, lease separation facilities that separate condensate from natural gas, or natural gas pipeline compressor stations that supply

energy to move gas through transmission or distribution lines into storage.”[6] EPA also noted that “examples of operations that this proposal does not intend to add to TRI coverage include Joule-Thompson valves, dew point depression valves, and isolated or standalone Joule-Thompson skids.”[7]

Effect of the Proposal on the Natural Gas Industry

EPA estimates that approximately 517 facilities fall under the NAICS Code 211112, of which almost half would exceed applicable thresholds and be required to submit annual TRI reports. However, if the industry sector is added as proposed, all NGP facilities would be required to annually evaluate their operations and determine whether thresholds for reporting have been exceeded. Facilities with 10 or more employees would be required to undertake a detailed evaluation of the natural gas processed in order to determine whether TRI chemicals constituent in the natural gas are manufactured or processed in excess of an applicable threshold. Based on the hard rock mining industry's experience with TRI reporting, making threshold determinations for TRI chemicals constituent in an extracted material is time consuming and expensive. Indeed, EPA estimates that the proposal would cost industry up to \$13.5 million for the first year of reporting and up to \$7.3 million for each reporting year thereafter.

While the future of the proposed rule under a Trump administration is unclear, owners and operators of NGP facilities concerned about the potential impact of the proposed rule should consider submitting comments before March 7, 2017. We are tracking the rule's progress closely and would be happy to discuss the information provided, opportunities for comments, and potential implications of the proposal on your operations.

[1] *Addition of Natural Gas Processing Facilities to the Toxic Release Inventory (TRI) – Proposed Rule*, 82 Fed. Reg. 1,651 (January 7, 2017).

[2] Letter to Eric Schaeffer and Adam Kron, Environmental Integrity Project, from Gina McCarthy, EPA Administrator (October 22, 2015).

[3] See generally 40 C.F.R. Part 372.

[4] 82 Fed. Reg. at 1,653.

[5] *Id.*

[6] *Id.* at 1,654.

[7] *Id.*