



Western States Petroleum Association
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U.S. Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mail Code 6102T
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Comments from the Western States Petroleum Association (WSPA) on EPA Monitoring Record Keeping and Reporting Requirements

Dear Docket Clerk:

The Western States Petroleum Association (WSPA) is a trade association representing twenty-eight companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy products in six western states ó California, Arizona, Nevada, Oregon, Washington and Hawaii.

WSPA member companies own and operate various types of facilities (e.g., oil and gas production properties, refineries, marketing terminals, retail gasoline outlets, etc.) that will all be impacted by implementation of reporting proposals advanced by the U.S. Environmental Protection Agency (EPA).

WSPA members have actively participated in the policy and technical issues surrounding green house gas (GHG) emissions and the larger issue of Climate Change in legislative and regulatory arenas throughout the U.S. We recognize the need to work cooperatively as we address this global issue.

WSPA was an early and active participant in the detailed discussions with the California Air Resources Board (CARB) as they developed and implemented their Mandatory Reporting Regulation that required submittal of the first year's reporting data by June 1 of this year. We have also been working extensively with both the Western Climate Initiative (WCI) and the Western Regional Air Partnership (WRAP) in their efforts to develop uniform reporting protocols for the petroleum industry.

Through this real world experience, we have developed a comprehensive understanding of the critical issues surrounding the practical design and implementation of mandatory GHG reporting regulations.

WSPA submits these comments in response to the Environmental Protection Agency's (EPA) proposal to establish a comprehensive, federal Greenhouse Gas (GHGs) Registry, as published in the April 10,

2009 issue of the Federal Register, *74 Fed. Reg. 16488*. WSPA also supports the comments provided by the American Petroleum Institute (API).

WSPA strongly supports the need for a consistent approach to estimating and reporting GHG emissions. Only through a consistent process can the U.S. develop an accurate, reliable, and harmonized, national GHG reporting program. Such a program would: i) minimize the risks of a burdensome patchwork of conflicting definitions and reporting rules, and ii) ensure that emissions data can support future regulatory programs with potential market implications.

We have focused on what we feel are the most critical issues including: i) those that have the potential to create conflict and or duplication with programs currently in place or under development, or ii) provisions within the proposed EPA rule that pose unique problems for the petroleum industry in the West.

No De-Minimis Provisions in the Rule

Reporting data from facilities as complex as refineries and oil and gas fields is an enormous undertaking. Based upon our reporting work in California, approximately 99% of the emissions from the petroleum sector come from a few major source categories:

- Refining & Combustion emissions, and process emissions from Fluidized Catalytic Cracking Units (FCCU) and hydrogen plants
- Oil and Gas/Production - Steam generators, Co-Generation units and for light-crude operations - gas compressors

Given this data, it is clear that facilities would be forced to commit enormous amounts of time to implement EPA's proposal in order to document less than 1% of a facility's total GHG emissions. For example, one California refinery has reported that the actual emissions from minor sources (i.e., process vents, fugitives) represent less than 0.13% of their total facility inventory.

This relationship is also true for oil and gas facilities where the proposed rule would require sampling (tagging) of fugitive emissions from oil fields sources. As with refining, implementing EPA's provisions would result in a disproportionate effort and expense for negligible emissions.

Clearly emissions of this magnitude are far too small to make any appreciable difference in informing EPA or have any influence in GHG policymaking. Most existing GHG reporting programs have recognized this fact by including a De Minimis level in their reporting programs. De Minimis provisions allow facilities and agencies to focus their attention on key emission sources.

Recommendation: EPA should adopt a practical approach and define a De Minimis level for simplified reporting. The reporting rule should allow up to 5% of the emissions to be declared as De Minimis.

Requirement for New Equipment including Continuous Emission Monitoring Systems (CEMS) on combustion sources with design capacities over 250 MMbtu/hr

WSPA notes that there is a conflict between language in the Preamble and the text shown in the rule. The preamble states that CEMS are only required for combustion devices fired by solid fuels, or otherwise required by existing rules or permits. However, the rule language regarding selection of the "Tier" level (Section 98.33 (b)(5)), as currently written, would require CEMS for any combustion unit that has a maximum rated heat input greater than 250,000 Btu/hr or that ran for more than 1,000 hours in any year since 2005.¹

California refineries have already invested significant capital and hardware down a different path that yields equivalent, if not greater, accuracy using continuous High Heating Value (HHV) or carbon content analyzers. These installations are already in use in fulfilling the obligations under California's Mandatory Reporting Regulation.

EPA's provision requiring CEMs would be duplicative, and result in no additional information nor serve any useful purpose in a GHG program.

Recommendation: EPA should eliminate the conflict by modifying the language in the rule to match the preamble. EPA should also expressly allow the use of HHV and/or carbon content analyzers in Tier 3.

¹ API's reference in Exhibit 2 an excerpt of the rule language with specific edits (in red) for amending the rule language to reflect the intent and rationale presented in the preamble, and as summarized in Table C-1 (74 FR 68, page 16481).

**Exhibit 2 – Recommended rule language amendment
(74 FR 16634, April 10, 2009)**

(b) Use of the four tiers.

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(5) The Tier 4 Calculation Methodology:

(i) May be used for a unit of any size, combusting any type of fuel.

(ii) Shall be used for a unit if:

- The unit has a maximum rated heat input capacity greater than 250 mmBtu/hr, or if the unit combusts municipal solid waste and has a maximum rated input capacity greater than 250 tons per day of MSW, **and**
- The unit combusts solid fossil fuel or MSW, either as a primary or secondary fuel, **and**
- The unit has operated for more than 1,000 hours in any calendar year since 2005, **or**
- The unit has installed CEMS that are required either by an applicable Federal or State regulation or the unit's operating permit, **and**
- The installed CEMS include a gas monitor of any kind, a stack gas volumetric flow rate monitor, or both and the monitors have been certified in accordance with the requirements of part 75 of this chapter, part 60 of this chapter, or an applicable State continuous monitoring program, **and**
- The installed gas and/or stack gas volumetric flow rate monitors are required, by an applicable Federal or State regulation or the unit's operating permit, to undergo periodic quality assurance testing in accordance with appendix B to part 75 of this chapter, appendix F to part 60 of this chapter, or an applicable State continuous monitoring program.

(iii) Shall be used for a unit with a maximum rated heat input capacity of 250 mmBtu/hr or less and for a unit that combusts municipal solid waste with a maximum rated input capacity of 250 tons of MSW per day or less, if the unit:

- a) Has both a stack gas volumetric flow rate monitor and a CO2 concentration monitor, **and**
- b) The unit meets the other conditions specified in paragraphs (b)(5)(ii)(B) and (C) of this section, **and**
- c) The CO2 and stack gas volumetric flow rate monitors meet the conditions specified in paragraphs (b)(5)(ii)(D) through (b)(5)(ii)(F) of this section.

EPA verification vs. Self-verification or use of 3rd party verifiers

EPA's requirement for agency verification is problematic for four reasons. First, it is inconsistent with the other verification procedures that are currently in place in California and with other carbon registries and would result in duplicate verification efforts. Second, it would impose huge data management and transmission issues for the facility.

Third, it creates significant confidentiality issues relative to the transmittal of confidential business information. And lastly, verification by USEPA staff generates a significant staff time commitment.

EPA verification would create a huge agency obligation to manage and review literally thousands, if not tens of thousands, of individual data points from each of the hundreds of complex petroleum facilities that will be reporting under the regulation. This figure does not even include reports from other complex reporting sectors.

In addition, the use of EPA staff as verifiers as proposed in the Rule opens up the real question of the protection of confidential business information (for example, unit fuel-combustion rates -- see below).

EPA's approach also requires the submittal of all the underlying data used to calculate emissions. Specifically, every carbon content analysis (a daily requirement for refinery fuel gas) and daily average flow rate would require reporting of at least 365 times MORE DATA than required by either CARB regulations or WCI and The Climate Registry protocols.

This obligation would create significant data management issues because of the sheer size of the data sets ó not to mention the duplicate reporting efforts. In addition, no matter what shape the final EPA program takes, it must also include a platform that allows reporters to electronically upload their data from their systems directly into the reporting tool.

Recommendation: In the early reporting years verification may not be necessary. However, when there are market implications to the accuracy of emissions data, it will be important to include 3rd party auditing in the mandatory reporting program.

Designation, Handling and Protection of Confidential Business Information

The proposed rule requires the reporting of information that, if disclosed, would divulge methods and processes entitled to protection as trade secrets and Confidential Business Information (óCBIö). Indeed, the information requested of suppliers of fossil fuels and industrial GHGs in subparts KK through PP of the proposed rule, and the operational information requested of petroleum refineries in proposed subpart Y, are entitled to confidential treatment.

WSPA agrees with concerns offered by others, including API, on the need to protect confidential business information because of the competitive nature of the business. Specifically, WSPA believes petroleum fuel refiners, importers and exporters should not have to conduct additional reporting on petroleum feed stock and product volumes and GHG emissions to EPA.

Company operators already provide extensive data on the requested volumes of finished petroleum products and feed stocks to other federal and state agencies on a weekly, monthly and annual basis. These existing reporting schemes provide essential protection of competitively sensitive data as CBI. The proposed rule would establish duplicative reporting requirements and raises questions regarding EPA's ability to manage sensitive data as CBI.

Recommendation: EPA should coordinate with agencies like the Department of Energy (DOE) and Customs and Border Protection (CBP) to make use of existing reporting data and processes to support development of future climate policy.

A similar concern exists for reporting of process and rate information from stationary sources. For example, in proposed subpart Y, the rule requires information be reported on equipment leaks, storage tanks, uncontrolled blowdown systems, delayed coking units and loading operations.

These detailed data should be provided confidential treatment. This information, while perhaps tangentially useful to the calculation of emissions, can indicate refinery process rates that are obviously sensitive information among competitors. We refer you to the API comments for a thorough discussion of this issue.

Recommendation: The most straight forward way to eliminate the vast majority of the confidentiality issues is to move away from EPA verification. That would allow sensitive business information to remain on site with only emission estimates moving into the public domain.

Reporting schedule is physically impossible to meet

EPA proposes a reporting system that is based on annual emissions by facilities and reporting separately by suppliers, importers and exporters of fuels and specified gases. The reports will be submitted annually on March 31st of each year for emissions from the previous calendar year and would start January 1, 2010. There is little likelihood that industry can feasibly comply with a January 1, 2010 start date especially if the rule is not finalized until late in 2009.

Our experience with implementing the California reporting program shows that despite being more than 18 months into the program, reporters are still struggling to get their first year's data submitted even though the program only requires the use of best available data for the first year. In addition, the ARB has had to postpone, or effectively extend, the reporting deadline at least twice to deal with start-up issues.

EPA's March 31 date for submittal of the data is problematic because a March, 2011 report would be expected to include data from calendar year 2010. However, the three month period from January to March is insufficient to collect all activity data that would be required to calculate emissions, conduct internal reviews and quality assurance checks of the data, certify the data by a designated company representative, and submit it to EPA.

Other reporting programs allow longer time intervals for reporting (e.g., six months for the Toxics Release Inventory (TRI), and five months for California's mandatory GHG reporting).

Recommendation: Submit data on a calendar year basis, with reports due 6-12 months after the close of each reporting year. We also recommend that EPA adopt a phase-in approach using best available data as in the CARB regulation.

Emission Calculation Methodologies

The EPA proposal requires the collection and evaluation of huge amounts of new data that has not previously been calculated. Hence, any means to minimize costs through consistent methods for data analysis would be beneficial.

As an example, the methods provided by the API Compendium are endorsed broadly by the worldwide oil and natural gas industry, and many companies have already incorporated them into their GHG estimation and reporting endeavors. The API Compendium is maintained evergreen, and its 2009 Edition will be published in June 2009.

Recommendation: EPA should implement a reporting program that is consistent with, and adopt elements from, existing reporting protocols and guidelines, such as the API Compendium of GHG

Emission Methodologies for the Oil & Gas Industry. The guidance provided by the API Compendium comprises robust, consistent and evergreen methods that are based on best available data.

Missing data procedures, recalculations, and violations

EPA is considering whether or not to include provisions to require facilities to correct previously submitted data. Under certain circumstances, EPA proposes to reference the procedure available in the California mandatory GHG reporting rule. However, EPA's proposed approach is not comparable to the California program.

Consider, for example, provisions concerning data recalculation. The California provision was crafted within the context of a system that relies on third-party verification, where data corrections are permitted - *without penalty* - following the auditor's review of the preliminary data submitted during a reporting cycle. Corrected inventories are to be submitted following the comments received from verifiers to close the verification cycle.

EPA has taken a different approach where it functions as the data verifier. The submitting of recalculated data, or use of "missing data procedures" would not necessarily reverse a potential rule violation nor would it relieve the reporter of any penalties associated with such a violation.

Recommendation: WSPA believes that for the purpose of this reporting rule, rule violations should be defined as non-reporting, late reporting, or egregious violation of reporting procedures. Mere recalculation due to inadvertent mistakes or filling in missing data for a set percentage of data loss should not be considered a violation.

Facilities should be allowed the flexibility to resubmit information that was identified as incorrect without ramifications. EPA should specifically stipulate that facilities (and their representatives) would have no liability if they follow the missing data procedures that are specifically outlined in the rule.

Legislative authority

EPA asserts that it developed the proposed reporting requirements based on existing authority under Clean Air Act Sections 114 and 208. *See* 74 Fed. Reg. 16448, 16454-55 (April 10, 2009). EPA, however, is over-reaching this authority, by requiring indefinite monitoring, recordkeeping and reporting from virtually all sectors of the economy regarding emissions. This requirement is in spite of, as yet, uncertain regulatory status.

None of the stated purposes for the data justifies the frequency and duration of the reporting requirements, the imposition of burdensome new measurement protocols, nor the installation of extensive and expensive instrumentation. Further, EPA already has in its possession and continues to collect, detailed GHG emissions inventory data that is sufficient to meet the stated purposes the Agency asserts underlie the proposed rule.

Disproportionate regulatory burden on the Oil & Natural Gas Industry

In the cost analysis presented in Table VIII-1 of the preamble and in the accompanying regulatory impact assessment (RIA), the estimated cost of implementing this rule is \$168MM in the first year, and diminishes to \$134MM after the second year. An estimated 95% of the cost is expected to be borne by the affected industry.

EPA does not present anticipated costs from evaluating alternative regulatory scenarios to justify their selection of the framework outlined in the Notice of Proposed Rulemaking (NPRM).

The proposed rule impacts the oil and natural gas industry through the requirements of reporting both as facility operators and fuel suppliers. This duplicative reporting provision creates disproportionate regulatory burdens and compliance costs on the oil and natural gas industry.

EPA's cost impact data in Table VIII-1 is inaccurate. It presents data for each of the subparts separately, but fails to consider the overall burden per facility as facilities are subject to more than one subpart. In addition, these costs fail to account for additional staff likely to be required to ensure compliance with the extensive requirements.

A few examples, assuming the costs are correct, from Table VIII-1 of the preamble, are illustrative of the disproportionate cost burden:

- General Stationary Fuel Combustion accounts for 6% of downstream emissions, but its first year total annualized costs would amount to 17% of the total share.
- Oil and natural gas systems account for 3% of downstream emissions but the first year total annualized costs are estimated to be 19% of the total share.
- Petroleum refineries are estimated to account for 5% of the downstream emissions with an estimate that their total annualized cost is 2% of overall program costs. This figure does not account for the cost of reporting for the stationary combustion units, or for electricity generation from cogeneration systems, which many refineries have installed to increase their energy efficiency and reduce the intensity of GHG emissions².

In addition, EPA's estimate for the cost per facility is probably low in particular when it comes to addressing fugitive emissions, since the total cost does not reflect data for the cost of inspections and maintenance.

Recommendation: EPA could streamline reporting and lower the burden on the oil and natural gas industry by aligning its fuel suppliers' reporting requirements with what is already being provided by the industry to the EIA, and to EPA's Office of Transportation Air Quality.

We appreciate the opportunity to comment on this important rule-making. Should you have any questions, I would be happy to assist you. You may also call Michael Wang of my staff at (626)590-4905.

Sincerely,

A handwritten signature in blue ink that reads "Cathy A. Boyd". The signature is fluid and cursive, with the first name "Cathy" and last name "Boyd" clearly legible.

Cc: Michael Wang - WSPA

² Refineries would also have to bear the cost of reporting under the landfill and wastewater provisions.