



June 09, 2009

U.S. Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mailcode 6102T  
**Attention: Docket ID No. EPA-HQ-OAR-2008-0508**  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

**Re: Comments from the Natural Gas Council Regarding the Proposed Rule,  
Mandatory Reporting of Greenhouse Gases (Proposed Rule) dated April 10,  
2009 (74 Fed. Reg. 16448)  
Docket ID No. EPA-HQ-OAR-2008-0508**

Dear Docket Clerk:

The Natural Gas Council (NGC) thanks the Environmental Protection Agency (EPA) for the opportunity to comment on the Proposed Rule on Mandatory Reporting of Greenhouse Gases (Proposed Rule). The NGC understands the challenges of crafting such a rule, and seeks through these comments to ensure that the Proposed Rule yields useful data at reasonable cost.

#### **About the Natural Gas Council**

The member organizations of the NGC represent virtually the entire North American natural gas industry – from production companies, to interstate pipelines, to local natural gas distribution companies to customer groups. The NGC is composed of the leadership of the following industry groups: the American Gas Association (AGA), the Independent Petroleum Association of America (IPAA), the Interstate Natural Gas Association of America (INGAA) and the Natural Gas Supply Association (NGSA), as well as executives from a number of other North American natural gas-related trade groups.

Natural gas will play a critical role as a means to implement policies to address climate change and improve America's energy security. It will take time to develop and deploy renewable, nuclear and other "low carbon" technologies as the Nation transforms its energy infrastructure. During this transition, natural gas – as the lowest-carbon fossil fuel – will be a critical fuel in helping meet America's energy demand and energy security and environmental goals. Natural gas is more than a bridge to the future, however. It is also an important part of the low carbon future, especially as we develop and deploy new technologies, including natural gas heat pumps, micro combined heat and power, and

carbon capture. Natural gas is clean, efficient, abundant, and domestic. Eighty-five percent of natural gas consumed in the United States is produced by American companies here in the United States. At present, natural gas is the only fuel both abundant enough and clean enough to make a significant near term contribution to powering a carbon-restricted economy effectively. Natural gas also will serve as a critical supplemental fuel, particularly for wind and solar power generation.

### **Guiding Principles for the Proposed Rule**

NGC understands EPA's goal in developing the Proposed Rule is to obtain data of sufficient quality to support climate change policies and regulations, while at the same time minimizing the Proposed Rule's administrative burdens – both by excluding small emitters and by crafting requirements that are consistent with existing greenhouse gas reporting programs and methodologies. NGC urges EPA to ensure that the Proposed Rule, when possible, avoids imposing new measurement requirements and allows reporters to utilize the best available data.

NGC notes that the Proposed Rule has a disproportionate impact on the oil and natural gas industry, because reporting requirements apply to both facility operators and fuel suppliers. EPA's cost impact data fails to consider the overall burden for each facility when it is subject to more than one subpart of the Proposed Rule. NGC asks EPA to reduce the burden on the oil and natural gas industry by aligning the fuel supplier reporting requirements with the data already being reported to the Energy Information Administration (EIA) and EPA's Office of Transportation Air Quality.

In addition, NGC believes EPA crafted the Proposed Rule in a broad manner that was not contemplated or required by the FY2008 Consolidated Appropriations Act. In particular, EPA interpreted the Act incorrectly, calling for *both* upstream and downstream reporting of GHG emission sources. NGC believes that the explanatory statement to the Act is most reasonably interpreted as an instruction to EPA to *consider* upstream and downstream reporting and to choose the approach that is appropriate for any given sector. In many cases, it is needlessly costly and burdensome for EPA to count the same unit of GHG both at the point of emission *and* further upstream. If there are compelling policy reasons in specific situations that would justify the collection of both upstream production and downstream sources, those situations and policies need to be identified clearly.

Moreover, although EPA mentioned several *potential* uses of the data proposed to be gathered, EPA conceded that it does not yet know what programs the Proposed Rule ultimately will support. EPA's statutory authority for the Proposed Rule, section 114 of the Clean Air Act, provides the agency with broad data collection powers. Still, those powers are not unlimited; in particular, section 114 enumerates specific purposes for which data collection is authorized. NGC submits that the Proposed Rule would be more precisely tailored to the agency's needs (neither gathering unnecessary data nor neglecting essential data), and more consistent with the limits of section 114, if EPA clarified which Clean Air Act programs it intends to pursue using the data collected.

Section 114 does not provide EPA with the license to collect any and all data that the agency might find useful for unspecified programs that may or may not be implemented at a later date.

### **General Comments on the Proposed Rule**

- **25,000 ton production threshold:** NGC supports EPA’s proposed 25,000 tons CO<sub>2e</sub> production per year reporting threshold, because this strikes an appropriate balance between administrative costs and the production of useful information for the Agency.
- **Timing of implementation:** NGC urges EPA to defer implementation of the rule for at least one year, and to shift the timing of reporting requirements to the end of the second financial quarter. Some key sectors, such as the gas transmission industry, have never been required to monitor greenhouse gas emissions. It will take time for such sectors (and others) to develop the human and physical infrastructure necessary to comply with the specific requirements of the Proposed Rule. A second-quarter reporting deadline will be more consistent with existing state greenhouse gas reporting programs, and will avoid interfering with the extensive first-quarter environmental data reporting requirements that apply to many industries.
- **Onshore petroleum and natural gas production facilities:** NGC believes that including onshore petroleum and natural gas production facilities in the reporting requirements runs counter to EPA’s focus in this proposal. EPA structured the proposal by selecting its 25,000 tons CO<sub>2e</sub>/year facility reporting threshold in part based on a cost effectiveness test to capture most of the GHG emissions while limiting excessive costs. Despite this effort, under the current proposal, 43 percent of the first-year capital costs to comply with the rule will be borne by the petroleum and natural gas industry to report an estimated three percent of the Nation’s GHG emissions. Expanding the reporting requirements to onshore facilities will dramatically increase these costs unnecessarily. NGC endorses the comments on this issue submitted by the Independent Petroleum Association of America and the Natural Gas Supply Association.
- **“Once in, always in” reporting rule:** NGC believes that the EPA’s proposed “once in, always in” reporting requirement does not match the Agency’s goal of producing useful information while minimizing excessive administrative costs. NGC recommends that facilities that are below the reporting threshold continuously for three consecutive years should no longer be subject to reporting requirements. Three years of below-threshold reporting data should provide EPA with sufficient information about greenhouse gas production trends while avoiding the imposition of perpetual reporting requirements regardless of emission production levels.
- **State-level implementation:** NGC supports EPA’s decision to preserve an exclusive role for itself with respect to implementing the reporting requirements of the Proposed Rule. This will produce the most consistent and useful data and

minimize complexity and administrative costs for government and private-sector entities.

- **Third Party Verification:** EPA correctly proposed self-certification of emissions reports with EPA verification, rather than third-party verification. EPA has successfully used self-certification in the context of the Acid Rain Program and other emissions reporting programs. Self-certification also would minimize the risk of inconsistency and conflicts of interest in the verification process.
- **Confidential information:** Many of the reporting requirements in the Proposed Rule would generate confidential business information, such as the reporting of fuel quantities on a facility-by-facility basis. NGC urges EPA to make explicit distinctions between what information is mandated for reporting, and will remain confidential, and what information is disclosed publicly. Ancillary data required for reporting that is confidential business information also should remain confidential and not included in any public reports. NGC encourages EPA to reference the confidentiality provisions used by the EIA in conjunction with their collection of industry fuel supply information.

### **NGC Concerns With Subpart W**

EPA's proposed measurement program for oil and natural gas systems will (1) result in inaccurate and unreliable emissions estimates and (2) impose disproportionately high compliance costs on entities in our industry. The proposed measurement program also will be infeasible to implement by 2010 due to the scarcity of equipment and trained personnel. As a superior alternative, NGC endorses the methodology proposed in comments submitted by the Interstate Natural Gas Association of America (INGAA), which would require reporting entities to use direct measurements at a limited, but statistically appropriate, sample of components to develop continuously updated emission factors.

### **Fundamental Concerns With EPA's Direct Measurement Approach**

EPA's proposed requirement that oil and natural gas systems undergo annual direct measurement of fugitive emissions creates significant inaccuracies, and lends false precision to notoriously variable and difficult to characterize emissions. Annual direct measurement of fugitive emissions cannot capture the range of variables, such as operating conditions, system pressure, and component status, that cause fugitive emissions to fluctuate regularly. Direct measurements also are incomplete, because they are impractical to carry out at components located far from the ground or at a stationary platform. NGC notes that none of EPA's proposed direct measurement methods have been approved by testing and standard-setting organizations such as ASME, ASTM, or AGA – making it more likely that these methods will be applied inconsistently by different contractors and reporting entities. Lastly, EPA's proposed method will cause the industry to incur costs that cannot be justified in light of the poor quality of data likely to result. According to the Preamble to the Proposed Rule, Subpart W will impose a first-year compliance cost of \$0.25 per MtCO<sub>2</sub>e, almost six times the average compliance cost for the entirety of the Proposed Rule of \$0.043 per MtCO<sub>2</sub>e.

## **Emission Factors Are Sound, Widely Accepted, Cost-Effective Techniques for Estimating Fugitive Emissions**

In lieu of the direct measurement approach currently reflected in the proposed Subpart W, EPA should consider emission factor-based approaches to estimating fugitive emissions. Emission factors are well-understood and widely accepted means of estimating fugitive emissions, involve far less labor and capital cost than direct measurement, and most importantly, address many of the key sources of inaccuracy associated with EPA's proposed approach. In particular, emission factors can be estimated to reflect fugitive emissions under a variety of operational conditions. Additionally, emission factors can be applied easily to components that are otherwise unsafe or impractical to measure directly.

In light of the clear advantages of an emission factor-based approach of estimating fugitive emissions, NGC urges EPA to adopt a reasonable alternative to the proposed Subpart W, such as the method proposed by INGAA in its comments to the Proposed Rule. INGAA's proposed method would generate company-specific, continuously updated emission factors based on a limited sample of the "worst-offending" components. This method addresses EPA's concern that existing emission factors are outdated, while capturing the inherent cost and reliability benefits of a traditional emission factor approach.

### **Specific Comments on Subpart W**

In the event that EPA chooses not to pursue this alternative, NGC also submits brief comments on other specific aspects of Subpart W as follows:

- **Determining Applicability of the Rule:** The Proposed Rule failed to provide a "screening mechanism" or simplified measurement method that would allow smaller facilities to determine whether they are subject to a reporting obligation. Because fugitive emissions are so variable, the Proposed Rule effectively would require all oil and natural gas systems to undertake direct measurement as required under Subpart W, year in and year out. Thus, the lack of a screening mechanism undermines the administrative and cost benefits EPA sought to achieve by selecting a reporting threshold of 25,000 tons CO<sub>2e</sub> per year. To avoid this burdensome and costly result, NGC urges EPA to permit a simplified estimation method (such as emission factors) or a simple size-based threshold for purposes of determining the applicability of the Proposed Rule.
- **EPA Should Focus on Worst-Emitting Components:** Throughout the Proposed Rule, EPA attempted to balance the imperatives of administration, cost-effectiveness and coverage by excluding small sources or providing simplified estimation methods. Yet, EPA failed to apply this principle in the context of fugitive emissions, instead requiring

oil and natural gas facilities to directly measure almost *all* system components. Industry and EPA's Natural Gas STAR Program experience has shown that, of the twenty-four categories of measurable components listed in the proposed 40 CFR § 98.232(a), just six to eight account for approximately 80% of fugitive emissions at a typical facility. EPA should therefore restrict the list of measurable components to these "worst offenders." This approach would result in reporting of the bulk of fugitive emissions from our industry, while greatly reducing the cost and complexity of Subpart W.

- **Missing Data Methods Should be Provided:** Considering the number of individual complex measurements Subpart W would require reporting entities to undertake, it is inevitable that equipment failure or human error will lead to inadvertent occurrences of "missing data." In the majority of such cases, reasonable methods exist for estimating the missing measurements. For example, weather records can be consulted to obtain outdoor temperatures on a given day, or previous years' test data could serve as a proxy for a missing measurement at a given component. Consistent with the availability of "missing data" procedures in other subparts, EPA should allow reporting entities to use reasonable methods.
- **Measurement Methods Should be Flexible and Draw on Engineering Judgment:** EPA's approach to prescribing measurement methods errs by: (a) drawing on measurement methods that have not been developed, peer reviewed or approved by any of the recognized standard-setting organizations; (b) enshrining those methods in the text of the rule itself, thereby impeding the use of innovative measurement methods that may arise; and (c) prescribing a rigid hierarchy of methods for every system component, rather than relying on the judgment of measurement engineers to determine the most appropriate method.
- **EPA Should Distinguish Between Fugitive and Vented Emissions:** Subpart W should (1) segregate more clearly fugitive leaks from vented sources, (2) clarify that engineering estimates are appropriate for vented sources, and (3) revise § 98.233 to indicate clearly that monitoring (i.e., leak detection) is not required for vented sources. Although EPA's definition of "fugitive emissions" is consistent with that adopted by the Intergovernmental Panel on Climate Change, it does not correspond to North American usage in that it groups together vented and fugitive emissions. This introduces unnecessary confusion, especially in the proposed 40 CFR § 98.233, which provides that "leak detection" should be applied to all 24 source types listed in § 98.232(a). In general, *leak detection* should be applied to fugitive leaks and not vented emission sources, where engineering estimates are appropriate and preferred for quantifying emissions.

### **NGC Concerns With Treatment of NGL Suppliers**

EPA's proposed approach to estimating the upstream carbon content of natural gas liquids (NGLs) will yield misleading data by counting the same unit of NGL multiple times as it travels down the supply chain, and counting combustion emissions from NGLs that are almost certain to have non-combustive uses.

To elaborate, the proposed Subparts MM and NN would require the reporting of GHG emissions that would result from the combustion of all NGLs imported into the United States, as well as the reporting of potential combustion-related emissions of all NGLs (including bulk NGLs) produced by domestic processing facilities. These requirements introduce two severe inaccuracies. First, as EPA's own Technical Support Document for Natural Gas Distribution and Natural Gas Processing acknowledges, between 69.2% and 75.3% of all NGLs sold in the United States each year have *non-fuel* uses. Indeed, many individual NGL products are almost entirely used as industrial inputs for other products such as carpeting and plastics, and thus do not result in combustion-related GHG emissions. The Proposed Rule makes no attempt to discern between individual NGLs or their distinct end-uses, making it certain that the Proposed Rule will considerably overstate GHG emissions attributable to NGLs.

In addition, the Proposed Rule errs by including the reporting of bulk NGLs together with individual NGLs. Bulk NGLs are relatively unprocessed *intermediate products* in the supply chain for NGLs. Bulk NGLs have no marketable use apart from sale to fractionators and processors, (who separate these substances into individual marketable products such as ethane, propane, etc). Yet, the Proposed Rule requires the reporting of bulk NGLs *in addition* to the end products that result from further processing of the same unit of fuel – an obvious instance of “double counting” the same unit of emissions.

NGC believes that the NGL supplier provisions of Subpart MM and NN are based on fundamental misunderstandings as to the structure and function of the NGL industry. Accordingly, NGC urges EPA to (a) remove bulk NGLs from the reporting requirement and (b) shifting the point of reporting to fractionators (rather than domestic processors), who are in the best position to know the likely end-use of their product.

### **Requested Clarification of Importer / Exporter Definitions**

NGC requests that EPA refine the definitions of “importer” and “exporter” in the proposed 40 CFR §§ 98.6 and 98.390 in order to remove two potential sources of confusion. First, although the Preamble to the Proposed Rule makes it clear that blenders of petroleum products have no reporting obligations under Subpart MM, the definitions of “importer” and “exporter” in the proposed 40 CFR § 98.390 nonetheless make explicit reference to blenders. EPA should revise those definitions to make it clear that only entities that meet the general definition of “importer” or “exporter” in the proposed 40 CFR § 98.6 have reporting obligations under the Proposed Rule.

NGC thanks EPA for considering these comments, and expresses its willingness to provide any additional support or information as EPA contemplates its next steps in the rulemaking process.

Sincerely,



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