

Oil & Gas Activities – Agencies are “Up-in-the-Air” on Air Regulations

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Most of the news regarding the oil and gas activity in Pennsylvania and West Virginia, and now tapping into Ohio shale plays, has focused on water concerns. But regulators also are eyeing air impacts. New or revised air regulations affecting the oil and gas industry are looming on the horizon, while the impact of other recent issuances is still being played out.

Coming Soon: New Source Performance Standards and Air Toxics Standards

By month's end, U.S. EPA is scheduled to issue four air emission proposals impacting the oil and gas industry.

Specifically, EPA is reviewing two new source performance standards for onshore natural gas processing plants governing repairs, leaks of volatile organic compounds and sulfur dioxide emissions. EPA is considering changes that address well completion, compressors, storage vessels and pneumatic devices. Also under review are two air toxics standards. One rule applies to flash-emission tanks, leaks and glycol dehydrators at production operations. The other air toxics rule applies to dehydrators at major natural gas transmission and storage operations.

EPA has stated it is “taking a broad look” across the oil and gas sector “to identify sources of air pollution emissions, quantify those emissions, and consider how they could be reduced.” The extent to which this broad look will expand EPA's regulatory reach of course is the big unknown; its proposal at the end of this month will shed light on just how aggressive EPA's look is.

Aggregation and Source Determination

“Aggregation” involves grouping two or more pollutant-emitting activities together as a single emissions source. Smaller units that ordinarily would not trigger permitting could, if aggregated, constitute a “major” source subject to tougher requirements (although the Clean Air Act precludes aggregation of oil and gas wells or pipeline facilities for purposes of air *toxics* rules).

In September 2009, EPA's top air official (Gina McCarthy) issued a memorandum stressing that – with respect to aggregation – EPA would now consider equally whether activities are under common control; are located on one or more contiguous or adjacent properties; and belong to the same industrial grouping. (Previously a proximity-laden approach had been in place.)

The impact of the McCarthy Memorandum is not yet clear; if anything, EPA seems to be establishing a “dedicated interdependence” standard when analyzing contiguity and adjacency. For example, Region 5 found Summit Petroleum's gas wells, sweetening plant and flares in Mount Pleasant, Michigan to constitute a single source, due primarily to interconnections. The Region noted the “relationship between the facilities and the degree of interdependence between them”; also, Summit had not shown that the farthest well points could provide product to any plants other than the plant at issue.

In contrast, EPA's Region 8 did not aggregate the wells and compressor stations in a permit renewal for a BP facility in Durango, Colorado. Region 8 explained that though the wells could supply the BP station, they could also supply gas to non-BP facilities “and thus do not have the type of dedicated interrelatedness that was determinative in other EPA statements on the issue”.

On the state front, Colorado determined that an Anadarko compressor station and other emission sources “did not have a unique or dedicated interdependent relationship and were not proximate and therefore were not contiguous and adjacent” (a decision EPA affirmed in February 2011). And the West Virginia Air Quality Board in May 2011 rejected an appeal urging it to vacate permits issued to Appalachia Midstream Services; the appellant unsuccessfully argued that the DAQ should have aggregated the natural gas compressor stations with other nearby pollutant-emitting activities.

Many states – such as New Mexico in May 2010 and Texas in August 2010 – have recently issued new or revised guidelines on source determinations. Pennsylvania, however, has see-sawed on the issue. Last year it issued guidance urging Department of Environmental Protection personnel to consider aggregating sources where appropriate. But the guidance was rescinded in February; DEP is soliciting comment on whether any guidance should be issued regarding source determinations.

Aside from the “dedicated interrelatedness” concept that seems to be surfacing, another result of the McCarthy Memorandum seems to be that draft air permits are drawing more comments calling for aggregation of pollutant-emitting activities. Accordingly, any oil and gas company seeking a permit should be well-braced to defend its source determinations. Further, industry participants should heed the McCarthy Memorandum’s caution that “no single determination can serve as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances.”

Other Air Issues

Add to the mix the complicating factor of greenhouse gas regulation. Here the source-determination issue particularly comes into play; if multiple units are aggregated, they are more likely to trigger the current threshold for GHG regulation – a potential-to-emit 100,000 tons per year of CO₂-equivalent emissions (a lower benchmark is expected from EPA this year). And EPA has been urged to address methane emissions in the revised NSPSs due this month. Also relevant to the oil industry is EPA’s current reconsideration of its refinery NSPS, where EPA is obligated to address GHG emissions. Meanwhile, those in the petroleum and gas industry now must report GHG emissions to EPA; such data will help EPA determine where to direct its attention next in its attempts to curb GHGs.

Oil and gas activities have been blamed for contributing to exceedances of existing national ozone standards, yet EPA proposed even tougher ozone standards in January 2010. EPA has stated that final standards will be issued this month. If EPA finalizes its proposed level, most of the country will be “nonattainment”, meaning that permitting for any new ozone-producing activities will be far more difficult. EPA also is expected to propose a new PM_{2.5} NAAQS yet this year.

Recall too that EPA recently issued standards directed at toxic air emissions from existing stationary reciprocating internal combustion engines, subjecting even engines at smaller sources to certain maintenance practices.

Only the Beginning

For the federal actions noted above, stay tuned for what they look like in final form, how the states implement them, and whether they and local governments impose additional restrictions. Even better, actively participate as these rules and policies are developed, to push for common sense, risk-based approaches. It will take some considerable time and effort, but perseverance on this regulatory front will pay off for everyone in the long run.