EPA FINALIZES REVISIONS TO OIL AND NATURAL GAS NEW SOURCE PERFORMANCE STANDARDS

Julie R. Domike, Michael H. Winek, Gary E. Steinbauer & Gina N. Falaschi
Babst Calland

In September 2020, the U.S. Environmental Protection Agency published final rules related to the New Source Performance Standards for the Crude Oil and Natural Gas Industry at 40 C.F.R. Part 60, Subparts OOOO and OOOOa (NSPS). The two rules – the "Policy Amendments"[1] and "Technical Amendments"[2] (Rules) – arise from EPA's review of the NSPS pursuant to President Trump's 2017 Executive Order 13782, "Promoting Energy Independence and Economic Growth," which directs the Agency to review existing regulations that potentially "burden the development or use of domestically produced energy resources" and to revise or rescind regulatory requirements if appropriate. The Policy Amendments became effective upon publication in the Federal Register and the Technical Amendments became effective 60 days after publication in the *Federal Register*.

Policy Amendments

The Agency's "Policy Amendments" amend NSPS Subpart OOOO (promulgated in 2012), regulating VOC emissions from certain new, reconstructed, and modified sources in the oil and natural gas industry, and NSPS Subpart OOOOa (promulgated in 2016), regulating VOC and methane emissions from specified new, reconstructed, and modified sources in the oil and gas industry.[3] This rule provides that:

1. *The transmission and storage segments are no longer included in any source category regulated by the NSPS.* These excluded emissions sources include transmission compressor stations, pneumatic controllers and underground storage vessels. To regulate a source category under the NSPS, the Agency must first make a finding that the emissions of air pollutants from that source cause or contribute significantly to air pollution. These segments were not included in the original NSPS, and no such finding was made when these segments were added to the NSPS in the 2012 and 2016 final rules, making the regulation of the segments improper under the Clean Air Act (CAA). Accordingly, EPA amended the NSPS to remove these sources from the source category and rescinded the NSPS (including both the volatile organic compounds (VOC) and methane requirements) applicable to them.
2. *Methane emission limits for the production and processing segments are rescinded.* Sources in the production and processing segments include well completions, pneumatic pumps, pneumatic controllers, gathering and boosting compressors, natural gas processing plants, fugitive emissions and storage tanks. EPA found that because the controls to reduce VOC emissions for these segments also reduce methane, separate methane limitations for these segments of the industry are redundant. EPA determined that the rescission of these limits will not affect methane emissions from the production and processing segments.

---

[1] "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review," 85 Fed. Reg. 57018 (Sept. 14, 2020).

[2] "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration," 85 Fed. Reg. 57398 (Sept. 15, 2020).

[3] "Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Final Rule," 77 *Fed. Reg.* 49490 (Aug. 16, 2012); "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule," 81 *Fed. Reg.* 35824 (June 3, 2016).

3. *Methane emission limits from existing affected sources in the oil and natural gas production and processing segments will not be required by Section 111(d) of the CAA.* With rescission of the methane limits for the production and processing segments, the Agency is no longer required to issue existing source emission standards in those segments of the oil and natural gas source category pursuant to Section 111(d) of the CAA. In addition, EPA has interpreted CAA Section 111(d) to exclude VOCs from the requirement to address emissions from existing sources under this section because the section only applies to air pollutants for which air quality criteria have not been issued under CAA Section 108. VOCs, as precursors to particulate matter and ozone, are indirectly regulated as a criteria pollutant under CAA Section 108.
4. *EPA finalized its legal position that Section 111 of the CAA requires it to determine that a specific pollutant causes or contributes significantly to dangerous air pollution ("significant contribution finding") before the pollutant is regulated in an NSPS, unless the Agency addressed the pollutant when it initially regulated the source category*. As an alternative ground for rescinding the methane regulations, EPA found that its significant contribution finding for methane in the 2016 rule did not meet the statutory standard.

While the Policy Amendments rescind federal standards, the final rule did not withdraw the 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry (CTG), which provide reasonably available control technology (RACT) requirements for VOC emissions from existing oil and gas sources. Section 182 of the CAA requires states to revise their State Implementation Plans (SIP) to include RACT for sources of VOC emissions covered by a CTG if classified as moderate, serious, severe, or extreme nonattainment for ozone.[4] EPA proposed withdrawing the CTG in March 2018 but has not taken final action, meaning that states, including Pennsylvania, must amend their SIPs.

Technical Amendments

In a separate rule, the Agency promulgated "Technical Amendments" revising numerous substantive requirements of NSPS OOOOa. EPA issued the final "Technical Amendments" after responding to more than 500,000 comments on the proposed technical amendments published in September 2018. A summary of notable revisions is provided below.

	Summary of Revisions
Fugitive Emissions Monitoring at Well Sites and Compressor Stations	As compared to previous quarterly monitoring requirements, semi-annual fugitive emissions monitoring is required for compressor stations.
	Semi-annual fugitive emissions monitoring is required for non-low production well sites (*i.e.*, greater than or equal to 15 barrels of oil equivalent per day for the first 30 days of production).

[4] Section 184(b) of the CAA also obligates states in ozone transport regions to revise their SIPs to implement RACT with respect to all sources of VOC in the state covered by a CTG. The Ozone Transport Region (OTR), established by Section 184(a) of the CAA, is comprised of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the Consolidated Metropolitan Statistical Area, which includes the District of Columbia.

	Summary of Revisions
	Fugitive emission monitoring requirements do not apply at low production well sites (*i.e.*, less than 15 barrels of oil equivalent per day for the first 30 days of production).
	Initial monitoring must be conducted within 90, as opposed to 60, days after the startup of production.
	A new definition of "modification" for an existing source separate tank battery surface site clarifies the types of changes that trigger regulatory requirements.
Storage Vessels	Potential VOC emissions across certain controlled and manifolded storage vessels may be averaged to determine applicability.
Onshore Natural Gas Processing Plants	The definition of "capital expenditure" uses the Consumer Price Index to calculate the percent of the replacement cost for purposes of determining whether there is a modification triggering the equipment leak standards.
	Equipment in VOC service for less than 300 hours per year is exempt from monitoring requirements.
	The initial compliance date applies 180 days after initial startup.
Well Completions	Nearby, off-site separators, including production separators, may be used to control emissions during the flowback period, and emissions during certain pre-flowback steps need not be controlled.
Pneumatic Pumps	The technical infeasibility exemption for pneumatic pumps is expanded to apply at all well sites, not merely greenfield sites.
Closed Vent Systems (CVS)	Pneumatic pump CVS may be monitored for "no detectable emissions" using monthly audio, visual, and olfactory (AVO) monitoring or using optical gas imagery (OGI) at specified frequencies, in addition to annual Method 21 monitoring option.

	Summary of Revisions
	Storage tank CVS may be monitored for "no detectable emissions" using OGI at specified frequencies, in addition to annual Method 21 and monthly AVO monitoring options.
Alternative Means of Emission Limitation (AMEL)	An AMEL satisfying certain criteria may be granted after notice, following an opportunity for a public hearing, "based on the Administrator's judgment."
	For certain individual well sites and/or compressor stations, EPA has adopted alternative fugitive emissions programs as AMEL that have been established in specific states, including Pennsylvania and Ohio.

These are some of the many revisions included in the Technical Amendments. The less onerous fugitive emissions monitoring requirements and other changes offering additional compliance options and flexibility included in the Technical Amendments are good news for many oil and natural gas producers and processors, particularly smaller operators. The changes will ease compliance burdens, and EPA estimates that the Technical Amendments will save the oil and natural gas industry $100 million in compliance costs each year.

Conclusion

Lawsuits challenging the Rules have been filed and are pending in the United States Court of Appeals for the District of Columbia Circuit. The oil and natural gas industry itself is divided on the Policy Amendments in particular, with some large energy companies voicing opposition to EPA's removal of methane from the NSPS. Other oil and gas producers have provided their full support for these changes, including those related to methane.