



Barry Russell

May 31, 2012

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Thank you for contacting the Independent Petroleum Association of America (IPAA) to request information relating to existing and proposed regulations that negatively impact job growth in the oil and natural gas industry. We welcome the opportunity to respond. In summary, the government's approach to regulating the oil and natural gas industry lacks true justification, often times based on highly questioned science and utilizing economic analysis that varies widely from reality. As such, taken in tandem, the multitude of regulatory proposals are likely to have a much greater negative impact than represented, making it increasingly difficult to grow and create jobs in the United States.

IPAA represents thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts that will be the most significantly affected by the administration's proposed regulatory actions. Independent producers develop 95 percent of American oil and gas wells, produce 54 percent of American oil and produce 85 percent of American natural gas. The average independent producer has been in business for 26 years and employs 12 full-time and three part-time employees. In total, America's onshore independent oil and natural gas producers supported 2.1 million direct jobs in the United States in 2010.

IPAA has a diverse and largely small-business oriented membership. Our members have a great story to tell. In places like Ohio, Pennsylvania and North Dakota, economies are growing because of increased domestic oil and natural gas production led by independents. Other supporting industries – like restaurants, hotels, trucking companies, the steel industry - are realizing growth and renewed economic activity because of their proximity to domestic oil and natural gas plays.

However, the majority of IPAA members are small businesses, averaging roughly 12 employees, and are extremely sensitive to changes in tax and regulatory structures. The resultant uncertainty in their business environment means many independent producers cannot unleash their full job-creating potential. Investment must remain conservative because of the threats of added costs of doing business imposed by the onslaught of regulation. Even more troubling is the fact that many of the current guidance documents, rulemakings and regulations promulgated by the Obama administration have serious flaws in their underlying data and economic analysis. More accurate data reveals that many of the administration's proposals are solutions in search of real problems, as such fall short of any tangible benefit that would justify the exorbitant costs.

The administration has proposed multiple guidance documents and rulemakings related to the oil and gas industry in the United States. At this time, IPAA is collecting information from its members relating to these administrative actions so our thoughts are preliminary. These pending administrative actions include:

- (1) **EPA's Draft Guidance Document for Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels:** This draft guidance document was noticed in the Federal Register on May 10, 2012. Comments are due July 9, 2012. At this point, we are still digesting the full implications of the draft guidance document, and our analysis is preliminary/speculative. However, at first glance, there are a number of issues that arise.

First, EPA has proposed six Chemical Abstract Service (CAS) numbers that they will use to define whether the base fluid or any additive is considered a "diesel fuel." In the Federal Register Notice, EPA solicits comments on whether the definition of "diesel fuels" should be static. There is also a question relating to whether EPA should consider diesel fuels descriptions "consisting of chemical, physical and use-based attributes of diesel fuels along with the list of CAS numbers." We are concerned with the slippery slope and EPA's potential overreach beyond Congressional intent, which was specific to "diesel fuel."

A second issue that we remain concerned about is the effect of EPA's guidance on primacy delegation to states. We continue to see the primacy delegation issue as a problem. While it is unclear whether EPA will seek to address primacy, it is fair to expect environmental groups to challenge the primacy delegation as they have previously. We have raised the issue regularly and have tried to get the states more vocal on it. Some are starting to get worried. While this guidance is only for EPA permit

writers, the website statement is not limited to federal permits. There are also concerns that states will need to re-write their permitting regulations to comply with this guidance document thereby creating moratoria on development until this can be done. Finally, the guidance seems to suggest that EPA intends to over file enforcement actions in states with primacy.

- (2) **Bureau of Land Management’s (BLM) proposed hydraulic fracturing rule:** This rule involves BLM’s rulemaking regarding the regulation of hydraulic fracturing, wellbore integrity, and flowback water of oil and gas development on federal lands. Under the proposed rule, the BLM would mandate a one-size-fits all regulation on well construction, hydraulic fracturing, and flowback water on federal lands. IPAA believes this rule is unnecessary and makes federal lands less appealing. States are already regulating in these areas and understand the geographic and geological differences of their states. The proposed rule undoubtedly creates additional time delays and uncertainty into a federal leasing process that is rapidly becoming unappealing to America’s oil and natural gas producers.
- (3) **Waters of the US Guidance:** EPA and the U.S. Army Corps of Engineers (the Corps) have created a draft guidance document to identify waters protected by the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act or CWA) and implement the Supreme Court’s decisions concerning the extent of waters covered by the CWA. Congress authorized the agencies to regulate discharges of pollutants into “navigable waters,” which is defined in the Act as “waters of the United States.” The determination of what constitutes a water of the U.S. governs the scope of the agencies’ authority under a variety of Clean Water Act programs, including the National Pollutant Discharge Elimination System program and the Section 404 program. This guidance threatens to broadly expand EPA’s authority. Currently, this guidance document is undergoing review at OMB.

Any proposal that could restructure the scope of the CWA is a critical issue confronting American natural gas and petroleum production. The CWA has already far-reaching applications that affect the permitting and compliance activities of the natural gas industry. IPAA opposes changing the definition and believes that such a change runs counter to Congress’ original intent in passing the CWA. These changes would result from altering the definition of “navigable waters”, the fundamental Congressional link through the Commerce Clause to create and define federal jurisdiction of the CWA.

- (4) **Effluent Limitation Guidelines (ELGs):** In the fall of 2011, EPA announced its intent to “...develop effluent guidelines and standards for the discharge of wastewater from the

Coalbed Methane Extraction (CBM) industry and will develop pretreatments requirements ... for the discharges of wastewater from the Shale Gas Extraction (SGE) industry.”

There are a number of issues related to the CBM ELG but, in continuing the theme of rules based on bad data, there are serious issues with the economic basis for the analysis. EPA presents wellhead prices for CBM ranging from \$6.94/Mcf to \$9.65/Mcf. While these prices reflect the natural gas market in 2008, they are wholly inconsistent with current prices or estimated future prices for natural gas. Turning to the U.S. Energy Information Administration’s 2011 Annual Energy Outlook, it shows a 2011 Average Lower 48 Wellhead Price of \$4.09/Mcf and predicts future prices below \$5.00/Mcf until 2026. For EPA to properly assess Best Available Technology Economically Achievable (BATEA) in the context of the CBM ELG, it must assure that its economic analysis reflects these newer perspectives on natural gas prices.

With respect to the SGE ELG, there is an open question of applicability and whether it is useful to spend hundreds of thousands of dollars on a rulemaking that would likely only apply to one state. Clearly, the SGE ELG will be narrowly applied because the predominant management system for SGE produced water is injection under the Safe Drinking Water Act (SDWA) Class II Underground Injection Control (UIC) program. In fact, only in Pennsylvania has there been much discharge of SGE produced waters – discharged through publicly owned treatment works (POTW) or centralized waste treatment (CWT) facilities. More importantly, following allegations regarding the efficacy of these facilities in managing SGE produced water, the Pennsylvania Department of Environmental Protection dramatically limited these discharges. At issue then is whether this limited set of discharge situations warrants the development of an ELG.

- (5) **National Ocean Policy and Marine Spatial Mapping:** The proposed implementation plan of the administration’s National Ocean Policy has the real potential to change the permitting criteria and requirements for a large and varied number of economic sectors, including the development of America’s oil and natural gas. The policy involves literally dozens of federal agencies and administrative actions, despite the lack of any Congressional authorization and at a time of severely restricted budgets that will ultimately lead to a restrictive zoning of the oceans.

The ambitious effort has the potential to dramatically affect jobs as well as ocean, coastal and inland economies, with little foreseeable benefit. The policy adds a myriad of bureaucratic obstacles that will severely restrict access to vast resources even before

ocean industries have had the opportunity to assess the ever changing possibilities. This comes at a time when global energy demand continues to increase and the nation battles slow economic growth and continued hardship for consumers. It is essential that we have reliable and predictable access to our nation's offshore areas and avoid policies that would preemptively limit our potential.

In addition to the above outlined proposed actions, the following is a list of existing regulations that are negatively impacting the oil and natural gas industry's ability to create jobs:

- (6) **New Source Performance Standards (NSPS) for the Oil and Gas Sector:** This is EPA's recently finalized rulemaking relating to air emissions from fractured natural gas wells. Our biggest issue with the rule is that it is entirely based on faulty data. With regard to the science, an IHS CERA study determined that:

“EPA derived the emission factor from two slide presentations at Natural Gas STAR technology transfer workshops, one in 2004 and one in 2007. These two presentations primarily describe methane that was captured during ‘green’ well completions, not methane emissions. EPA assumes that all methane captured during these green completions would have been emitted in all other completions. This assumption does not reflect industry practice.”

Rather than EPA collecting its own data to underlay the rulemaking, EPA broadly applied this incorrect metric as the basis for a national rule. The consequences of overstating emissions in the development of NSPS requirements are threefold:

- First, overstating emissions leads EPA to conclusions that it needs to address operations based on expectations that the facilities present a major cause for regulatory action. Fully understanding the scope of emissions is essential to making appropriate regulatory targeting judgments.
- Second, in a NSPS determination, EPA is deciding which of several technologies “reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements)” and whether it has been adequately demonstrated in that application. If the emissions are overestimated, EPA will make conclusions that are not well founded. The technology's cost effectiveness will be overstated. Similarly, if the demonstration of the technology's use is based on

concentrations of compounds that will be higher than those in reality, it may not function properly.

- Third, overestimation will assure that the anticipated emissions reductions will never occur.

In the proposed NSPS, the extent of overestimation is extraordinarily high. Following the assessments of EPA's determinations of its emissions basis, companies have reviewed operations and evaluated completion estimates more fully. The results show errors not in percentages, but orders of magnitude. One company – that had been active in the Natural Gas STAR program used by EPA for some of its estimations – concluded that EPA's estimates were 14 times the company's actual emissions.

- (7) **Subpart W:** This rule involves EPA's rulemaking requiring the reporting of greenhouse gas (GHG) emissions for onshore petroleum and natural gas production systems. EPA's authority to require GHG reporting stems from the Consolidated Appropriations Act 2008. The relevant language from the Act is:

“Of the funds provided in the Environmental Programs and Management Account, not less than \$3,500,000 shall be provided for activities to develop and publish a draft rule not later than 9 months after the date of enactment of this Act, and a final rule not later than 18 months after the date of enactment of this Act, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.”

EPA asserted that it “... is proposing this rule under its existing [Clean Air Act] CAA authority, specifically authorities provided in section 114 of the CAA.” However, EPA created a definition of the term “facility” that is different than the definition applied under the CAA. EPA used a definition of facility that includes all petroleum or natural gas equipment on a well pad or associated with a well pad under common ownership or control, including leased, rented, or contracted activities by an onshore petroleum and natural gas production owner or operator, that are located in a single hydrocarbon basin.

Under this definition, for example, all wells under common ownership along the Gulf Coast of Texas and Louisiana and deeply into the mainland of those states would be considered as one facility. This would be analogous to proposing that every McDonald's restaurant in the State of Texas should be considered as one facility because they have the same name and are franchised from a common source.

Nothing in the CAA suggests that EPA can define an onshore petroleum and natural gas production facility as broadly as it proposes. Nevertheless, EPA did just that.

Two additional issues that threaten America's independent producers are EPA's enforcement initiative and EPA's on-going hydraulic fracturing study.

(8) **EPA's Enforcement Initiative:** EPA included oil and natural gas production operations in its proposed enforcement and compliance national priorities for fiscal years 2011-2013. Included within these draft priorities is a proposal to target natural gas and oil production facilities. EPA indicates that it will be considering the following factors in setting its agenda:

- Can significant environmental benefits be gained or risk to human health or the environment be reduced through focused EPA action?
- Are there identifiable and important patterns of environmental law violations?
- Are the environmental and human health risks or the patterns of noncompliance sufficient in scope and scale (i.e. occur nationwide) such that EPA is best suited to take action?

Natural gas and oil production operations have been and continue to be regulated under a wide variety of federal and state environmental laws. While EPA has retained regulatory authority in limited cases or is the sole regulator under certain federal laws, state programs dominate the regulatory regime. These state programs have been in place for decades and function effectively. Nevertheless, EPA included oil and natural gas production operations.

EPA has interceded in a number of locations around the country in recent years - specifically, Dimock, Pennsylvania, Pavillion, Wyoming, and Parker County, Texas. In each case, EPA has reached questionable results because of their faulty scientific analyses.

(9) **EPA's Hydraulic Fracturing Study (Retrospective Case Sites):** As part of EPA's hydraulic fracturing study, EPA is undertaking both retrospective and prospective case studies. In doing so, EPA states that they will conduct environmental field sampling, modeling, and/or parallel laboratory investigations. Additionally, EPA plans to use the results of their case studies in determining "whether hydraulic fracturing can impact drinking water resources and, if so, the extent and possible causes of any impacts." It should be noted that EPA's plan does not include any review or analysis of the relative *risk* of contamination under current regulatory framework.



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Companies have been unable, in many instances, to undertake split samples on the sites that EPA is testing. Moreover, in cases where companies are able to take samples along with EPA, those companies are having difficulty replicating EPA's testing procedures since most commercial laboratories do not test to the minute levels that EPA is seeking. In light of what has happened in places like Pavillion, Wyoming, Dimock, Pennsylvania, and Parker County, Texas, there are serious questions about whether EPA's data collection and testing will be reliable – especially since there is no way to verify their results. The impact of a wide-ranging federal study on hydraulic fracturing that is not based on sound science could be devastating for America's independent producers.

Thank you for providing us with the opportunity to share our concerns relating to regulations that are impacting job growth for America's independent producers. Should you have any questions or need additional information, please contact me at 202.857.4722.

Sincerely,

Barry Russell
President and CEO