

Testimony  
Of  
The  
Independent Petroleum Association of America  
Before The  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
October 31, 2007  
Hearing on  
Oil and Gas Exemptions in Federal Environmental Protections

This testimony is submitted on behalf of the Independent Petroleum Association of America (IPAA). IPAA represents petroleum and natural gas producers, the segment of the industry that is affected the most by government policies associated with oil and natural gas exploration and production and national energy policies that fail to recognize the importance of our American resources. IPAA's producer membership is comprised of companies ranging from large publicly traded companies operating in the upstream – exploration and production – segment of the industry to small individually owned companies. Most employ fewer than 20 employees. Independent producers drill 90 percent of American oil and natural gas wells, produce approximately 82 percent of American natural gas and produce about 68 percent of American oil – well above that percentage of the oil in the lower 48 states. Within this production are America's marginal wells. The operation of these wells is dominated by small business members of IPAA. The overwhelming number of wells in the United States falls in this category. Approximately 85 percent of America's oil wells and 70 percent of America's natural gas wells are marginal wells. Equally significant, while each marginal well is a small producer, collectively, they provide about 19 percent of America's oil production and 10 percent of America's natural gas production.

Domestic petroleum and natural gas production has changed over the years, particularly since the mid-1980s. Maturing production areas in the Lower-48 states and the need to respond to shareholder expectations have resulted in major integrated petroleum companies shifting their exploration and production focus toward the offshore in the United States and into foreign countries. More and more, these large companies must rely on large producing fields that are found only in frontier areas. Consequently, the role of independents is increasing in both the Lower-48 states and in the offshore areas. For example, the independents' share of Lower-48 states petroleum production has increased from 45 percent in the mid-1980s to over 60 percent by 1995 – and these states, despite their mature fields, still account for the majority of American oil production. These trends will continue. The nation will need a strong independent exploration and production industry to meet its future needs.

It is essential to understand the role of oil and natural gas in America's energy supply, now and in the future. They are critical. Currently, oil and natural gas account for about 65 percent of America's energy supply. Clearly, people recognize the role that oil plays in fueling most of the nation's transportation. Similarly, the role of natural gas for heating is widely understood. But, it is equally important to understand that natural gas is an essential feedstock for many chemical processes and for fertilizer manufacturing. It is a key source for process heating in both the chemical and manufacturing segments of American industry. Consequently, in addition to their direct role in energy supply, oil and natural gas are linked to the success of other energy supply options. Ethanol requires fertilizer for the crops and natural gas for processing. Windmills and solar cells must be manufactured and transported. Moreover, these are technologies that are intermittently available and when they are not providing power, it is most likely that natural gas will be the fuel used to meet that power need.

Looking forward, energy demand growth will be essential to the growth of the U.S. economy and all forms of energy will be needed. Projections by the Energy Information Administration (EIA) show energy demand increasing by about 30 percent over the next 25 years. As U.S. energy demand grows, the percentage supply of oil and natural gas stays about the

same – meaning that more oil and natural gas will be needed. Even aggressive global climate initiatives have the consequences of creating more natural gas demand.

Testimony submitted to this hearing by the Natural Resources Defense Council (NRDC) proposes a series of changes to federal environmental law that taken together can only serve to cripple American oil and natural gas production without attendant environmental benefits. NRDC seems to base its proposals on what are two fundamentally flawed presumptions. First, no environmental law is worthwhile unless it is federal law; no regulation is meaningful unless it is federal regulation. Second, the existence of provisions in federal environmental law that differ from the NRDC view of the pure law is improper and inappropriate.

In reality, most federal environmental laws are predicated on the existence of state regulatory programs that can be delegated the implementation of the federal law or assume primacy for regulating in a particular arena. This essential structure is based on the reality that these states have effective regulatory programs and that the federal government structure is not designed to manage day-to-day regulation. Many of these state programs – particularly in the oil and natural gas exploration and production arena – predated the federal laws. Similarly, most federal environmental laws were developed on a model based on manufacturing facilities that are large, generally located near urban areas and present concentrated sources of emissions or discharges. This model is wholly inconsistent with the nature of oil and natural gas production which is generally rural, comprised of hundreds of thousands of operations and has diverse and small sources of emissions and discharges.

Responding to NRDC's specific issues demonstrates the flaws in the arguments.

#### TOPIC I. Ensure the Public's Right-to-Know

- NRDC's Proposal: Require oil and gas exploration and production companies to report to the Toxic Release Inventory to provide information to the public regarding chemicals that may pose a risk to the health of local communities.
- *Response: The Toxic Release Inventory (TRI) was created by Congress to obtain information on chemical releases from the manufacturing sector of the economy where concentrated operations at facilities pose a potential risk if releases occur. Oil and natural gas E&P operations are scattered throughout the country in mostly rural areas and individually do not pose significant risks. While EPA has the authority expand the scope of the TRI reporting requirements, it has not added oil and natural gas E&P operations because there is no compelling reason to create a new reporting burden that provides no real additional information.*

#### TOPIC II. Protect Underground Sources of Drinking Water

- NRDC's Proposal: Subject all hydraulic fracturing by the oil and gas industry to the Underground Injection Control program of the Safe Drinking Water Act;
- *Response: The Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program is intended to manage the disposition of wastes into geologic repositories. Hydraulic fracturing is a well stimulation technology that has been used for more than 50 years over a million times. It has been regulated for decades by states and never posed an environmental risk. It is essential to the*

*development of American natural gas and oil. There are no environmental benefits to additional federal regulation.*

- NRDC's Proposal: Increase daily fines for violations by the oil and gas industry to equal those for other industries; Require that the underground injection of materials associated with the oil and gas industry that meet RCRA's definition of hazardous waste meet the standards of Class I injection.
- *Response: These two items appear to be related to the elements of the UIC program that relate to produced water as a secondary or tertiary recovery technology to enhance production of American oil and natural gas. In 1980, Congress amended the SDWA to provide greater flexibility to states that had operational programs to manage the use of produced water to enhance oil and natural gas recovery. The structure of the SDWA and its subsequent regulations for Class II wells proved so burdensome that states were unwilling to seek primacy under the SDWA to run the federal program. The law was changed to allow states to show that their programs provided comparable levels of protection rather than meet the specific federal program requirements. Without these changes, enhanced oil recovery would have been crippled. Chairman Waxman chaired the subcommittee of jurisdiction at that time and managed the bill in the House of Representatives.*

### TOPIC III. Protect American Waters

- NRDC's Proposal: Delete the term "navigable" from the Clean Water Act;
- *Response: This issue goes well beyond oil and natural gas and in the subject of another major environmental initiative (HR. 2421). It would not only affect oil and natural gas operations, but farms, ranches, water supply agencies and flood management agencies among many others. At issue is the scope of the Commerce Clause of the Constitution.*
- NRDC's Proposal: Require stormwater permits for all oil and gas industry activities;
- *Response: Stormwater permits are required for both construction and operations related to oil and gas industry activities when the stormwater is contaminated. The change in the Clean Water Act (CWA) in the Energy Policy Act of 2005 did not exclude the industry from regulation; it assures that regulation would be based on the same standard for both construction and operations.*
- NRDC's Proposal: Apply the Clean Water Act definition of "pollutant" to all materials used in oil and gas operations.
- *Response: This item must refer to the definition of "pollutant" in the CWA which excludes "produced water" (water that is produced with oil and natural gas) that is injected under State programs for secondary and tertiary recovery of oil and natural gas. The definition was written in 1972. In 1974, Congress passed the Safe Drinking Water Act that provided federal authority on Underground*

*Injection Control (UIC) and these operations are covered under Class II wells – largely run by states. It seems illogical to include these operations in the CWA. Produced water discharges to the surface are already regulated under the CWA;*

#### TOPIC IV. Protect the Air

- NRDC's Proposal: Require aggregation of the emissions of oil and gas exploration and production activities under the National Emission Standards for Hazardous Air Pollutants;
- *Response: When Congress passed the 1990 Clean Air Act Amendments, it specifically prohibited aggregation of oil and gas E&P sites under the Hazardous Air Pollutants title because these sites operate as separate facilities and are frequently under different ownership. EPA has taken action to regulate the principle source of concern at E&P sites – glycol dehydrators emitting benzene – but there no compelling basis to broaden regulation.*
- NRDC's Proposal: Include oil and gas wells and their associated equipment on the list of small hazardous air pollutant sources wherever they are located;
- *Response: EPA finalized an area source rule for oil and natural gas E&P operations in January 2007 for glycol dehydrators focused on areas near population. The emissions are generally small and requiring controls in remote areas was not cost effective and did not enhance environmental production.*
- NRDC's Proposal: Add hydrogen sulfide to the list of hazardous air pollutants.
- *Response: Hydrogen sulfide is an acutely toxic gas; however, it has not been considered a toxic air pollutant in low concentrations. Congress deleted hydrogen sulfide from the Clean Air Act toxic substance list in 1991. Hydrogen sulfide can be produced with oil and natural gas and states have regulated it to protect against its acute effects. EPA studied hydrogen sulfide in the context of oil and gas operations and concluded in 1993 that it should be regulated with regard to accidental releases but not low level emissions.*

#### TOPIC V. Protect the Land

- NRDC's Proposal: Include all toxic wastes associated with oil and gas exploration and production under RCRA's cradle to grave hazardous waste provisions;
- *Response: This issue relates to EPA's implementation of the 1976 Resource Conservation and Recovery Act (RCRA) law. In 1978, EPA produced a series of new requirements designed to address the management of concentrated hazardous wastes in landfills and other management options. However, these regulations did not adapt well to a series of high volume, low toxicity wastes. In 1980, Congress suspended regulation of these various wastes – oil and gas drilling fluids and produced water, utility coal ash, mining wastes, cement kiln dust, etc. – and required EPA to study them and their existing regulatory structure. In 1987, EPA determined that RCRA (Subtitle C) hazardous waste regulations were inappropriate for oil and gas drilling fluids and produced waters and that they were adequately regulated by the state management*

*programs. Since then, EPA has participated in recurring reviews of the state programs to improve them when necessary. RCRA Subtitle C is not an appropriate regulatory structure for these wastes.*

- NRDC's Proposal: Include oil and gas under the Superfund law—CERCLA.
- *Response: When Congress passed CERCLA in 1980 and amended it in 1986, it considered the appropriate scope of the new and extensive liability provisions of these acts. Among its decisions was that federally permitted releases should not be subject to Superfund and that wastes that Congress had specifically excluded from regulation should not be included. Moreover, Congress specifically passed oil spill legislation in 1990. More broadly, with all the real challenges facing Superfund, there is no indication that the hundreds of thousands of oil and natural gas wells sites in the country pose anything close to a risk that necessitates coverage under Superfund.*

The Committee – and more broadly the Congress – should summarily reject NRDC's proposals. They follow the tired path of alleging to the Congress the need to change laws and regulations that do not follow NRDC's world view and where NRDC and its allied professional anti-development organizations have failed to change the regulatory program through the normal processes or by appealing to the court system. This collection of proposals will have one clear effect – less exploration and production of American oil and natural gas and more foreign dependency. This is hardly an energy policy that makes sense of America.