



Stakeholder Meeting on EPA Rules that can be Repealed, Replaced or Modified to Reduce Regulatory Burdens under Executive Order 13777 Enforcing the Regulatory Reform Agenda

April 25, 2017 – Samantha McDonald

This statement is presented on behalf of the Independent Petroleum Association of America. Written comments will also be submitted. IPAA's membership spans the scope of America's independent oil and natural gas producers and has a strong small business component. These small businesses are the primary operators of America's marginal wells.

The average marginal oil well produces about 2.7 barrels per day and the average marginal natural gas well produces about 22 thousand cubic feet per day. Approximately 80 percent of US oil wells are marginal wells and about two-thirds of American natural gas wells.

This juxtaposition of small businesses operating marginal wells means that EPA regulations that fail to recognize their impact on marginal wells result in excessive impacts on small businesses.

Small businesses are a key part of the industry because oil and natural gas wells naturally deplete over time. Correspondingly, the industry is a "food chain" industry. As large companies want more capital, they sell their lower producing properties to smaller companies that are the primary owners of marginal wells.

While many EPA regulations can impact small businesses, these oral comments will address some recent air and waste water regulations. IPAA's written comments include other regulations.

Over the past several years, EPA has created several Clean Air Act (CAA) regulatory actions regarding oil and natural gas production operations. These include: New Source Performance Standards Subpart OOOO and Subpart OOOOa and Control Techniques Guidelines – CTGs.

Because these regulations apply to new sources, they are perceived as having limited small business implications. They are incorrectly thought to be capital requirements.

The regulations changed the targeted emissions from VOCs to methane. This did not improve oil and natural gas production emissions management since VOCs and methane are emitted

simultaneously and the regulations capture both. It was a political decision to open a pathway for nationwide existing source regulation and a direct effort to pursue and shut down marginal wells.

The regulations include a fugitive emissions component. Multiple states have created fugitive emissions programs. All are different; none use the approach in EPA's regulations. EPA's determination is wholly flawed, but it further creates specific and crushing implications for small businesses.

The fugitive program creates an enduring operating cost for the life of the well. Consequently, the cost effectiveness of this requirement changes as the costs must be borne by ever smaller production. When EPA proposed its fugitive program, it created an exclusion for low producing wells. By creating the exclusion, small businesses would not have been subjected to the demanding costs of the program. However, in the final rule, EPA removed the low producing well exclusion. Consequently, new wells will not be sellable as they decline because of the added costs. And, if EPA develops a nationwide existing source rule with the same framework, the broad fabric of America's marginal wells will be destroyed.

The Trump Administration decision to stay the effective date of the fugitive emissions program and open the record to reconsider these requirements should lead to a modification of regulations applying to low producing wells – a modification to reflect the distinct differences between these wells and large hydraulically fractured wells.

The CAA also provides for the development of CTGs for existing sources of criteria pollutants in nonattainment areas. EPA finalized VOC CTGs for existing oil and natural gas production operations in ozone nonattainment areas in October 2016.

The oil and natural gas production CTGs adversely affect small business operators because they apply to low producing operations. The CTGs as finalized essentially require replacing existing equipment with the new source technology. They fail to consider the costs that must be borne by small operators with low producing wells.

Because the new source regulations are positioned to be reconsidered, the CTGs need to be suspended or withdrawn. Additionally, a thorough assessment of the impacts on small businesses must be made.

The Clean Water Act (CWA) can impact small business oil and natural gas producers in several ways. A prominent element is the creation of Effluent Limitations Guidelines (ELGs) that define waste water discharge limits.

EPA created pretreatment standards for discharges of wastewater from onshore **unconventional** oil and gas extraction facilities to publicly owned treatment works, or POTWs. This ELG creates two issues that need to be addressed.

First, the ELG scope applies to shale formations considered to be conventional formations that had been developed for decades prior to the advent of shale gas – formations that had been a mainstay for small business operators.

Second, EPA failed to meet its fundamental mandate to develop ELGs based on Best Available Technology Economically Achievable (BATEA). Instead, EPA merely concluded that it would prohibit discharges to POTWs from oil and natural gas facilities. Producers were denied the use of other environmentally acceptable options such as underground injection or recycling in this case.

Conclusion

In conclusion, these issues are examples of the potential adverse impacts on small businesses from EPA regulations and potential regulations. EPA needs to recast its thinking by developing an understanding of the industry. It needs to use the authority it has to support, not penalize, small businesses.