



December 4, 2015

Via www.epa.gov and email

Office of Air Quality Planning and Standards (OAQPS)

U.S. Environmental Protection Agency

RE: Comments of the Interstate Natural Gas Association of America on the Source Determination for Certain Emission Units in the Oil and Natural Gas Sector Proposed Rule Docket ID No. EPA-HQ-OAR-2013-0685.

To Whom It May Concern:

The Interstate Natural Gas Association of America (INGAA) appreciates the opportunity to comment on the Source Determination for Certain Emission Units in the Oil and Natural Gas Sector Proposed Rule.¹

INGAA and its member companies have a long history of working collaboratively with a variety of stakeholders on various Environmental Protection Agency (EPA or the Agency) initiatives to define the term “adjacent” more clearly for the purposes of defining the term “stationary source” under various Clean Air Act (CAA) programs.

Natural gas provides 25 percent of the basic energy needs in the United States. The 25 INGAA member companies operate approximately 200,000 miles of underground interstate pipelines and related structures that safely and reliably deliver natural gas.

INGAA member companies primarily operate in the transmission and storage segment of the natural gas sector. Activities in the transmission and storage segment should not be subject to the Proposed Rule because, by its terms, the Proposed Rule only applies to activities in oil and natural gas production segment and the natural gas processing segment. However, out of an abundance of caution, INGAA submits these comments to: (1) urge EPA to affirm the exclusion of the transmission and storage segment from the scope of this rulemaking; and (2) encourage EPA strongly, in any event, to reject any application of Option No. 2 to the transmission and storage segment because this option would be inconsistent with statute and unworkable as applied to the transmission and storage segment.

¹ 80 Fed. Reg. 55,579 (Sep. 18, 2015 (hereinafter “Proposed Rule”).

I. *EPA Should Make Explicit that the Proposed Rule Does Not Apply to the Transmission and Storage Segment.*

The Proposed Rule states that it will only apply to activities in the oil and natural gas production and natural gas processing segments,² and *not* the transmission and storage segment.³ Under the proposed rule’s “General Information” section, however, two distribution industry segments are listed as being “affected” by the proposed rule.⁴

To increase certainty, INGAA respectfully requests that EPA make clear that this rulemaking does not apply to the natural gas transmission and storage segment.

INGAA does not have a view on the appropriateness of application of the Proposed Rule to the oil and natural gas production and natural gas processing segments.

II. *EPA Should Reject Any Application of Option 2 to the Transmission and Storage Segment Because Such an Approach is Inconsistent with the Statute and Would be Unworkable.*

In the Proposed Rule, EPA sets forth two options for clarifying the term “adjacent” in the definitions of “building, structure, facility or installation” used to determine the “stationary source” for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs and the “major source” in the title V program as applied to upstream and midstream activities in the oil and natural gas sector.

- The first option (Option 1) – which EPA explains is the option that is “currently preferred”⁵ – would define “adjacent” to cover only emitting activities located on the same surface site, or on surface sites within one quarter mile of one another.⁶

² Proposed Rule at 56,583 (“For purposes of this proposed action, we are primarily interested in the first two of these: oil and natural gas production, and natural gas processing, or what may be referred to in the industry as “upstream” and “midstream” operations”). *See also* proposed regulatory text for Option 1, 40 C.F.R. § 51.165(a)(ii)(B) (applying the proposed Option 1 interpretation only to onshore activities under SIC Major Group 13: Oil and Gas Extraction); *and* proposed regulatory text for Option 2, 40 C.F.R. § 51.165(a)(ii)(B) (applying the proposed Option 2 interpretation only to onshore activities under SIC Major Group 13: Oil and Gas Extraction).

³ Proposed Rule at 56,582 (distinguishing pipeline transmission and storage of natural gas from midstream and upstream activities by noting that the former activities are included under NAICS Code 486 while the latter are included under NAICS Code 2111).

⁴ Proposed Rule at 56,579 (listing as “potentially affected” NAICS Code 486210: Pipeline Distribution of Natural Gas).

⁵ Proposed Rule at 56,586.

⁶ Proposed Rule at 56,590 (proposed regulatory text for Option 1, 40 C.F.R. § 51.166(b)(6)(ii)).

- The second option (Option 2) would consider pollutant-emitting activities “adjacent” if one of the following circumstances applies: (A) the pollutant-emitting activities are separated by a distance of one quarter mile *or more and* there is an *exclusive functional interrelatedness*; or (B) the pollutant-emitting activities are separated by a distance of less than one quarter mile.⁷

First, as explained in Section I, regardless of what interpretation of “adjacent” EPA finalizes in this rulemaking, that interpretation should not apply to activities in the transmission and storage segment because such activities are outside the scope of this rulemaking.

Second, INGAA urges EPA, in any event, not to apply Option No. 2 to the transmission and storage segment because it would exceed the Agency’s authority under the Clean Air Act and would be unworkable. In effect, Option 2 appears to allow EPA to consider as “adjacent” pollutant-emitting activities that have an exclusive functional interrelatedness *regardless of how distant they are from one another*.

As EPA recognized in the Proposed Rule, the U.S. Court of Appeals for the District of Columbia Circuit has held that the term “source” for the purposes of permitting under the Clean Air Act should correspond to the “common sense notion of a plant.”⁸ Yet, application of Option 2 to activities in the transmission and storage segment would open the door to absurd results that in no way comport to the *Alabama Power* holding. Interstate transmission pipelines can be thousands of miles long and can include numerous compressor stations. Were EPA to apply Option 2 to the transmission and storage segment, EPA might consider *all* commonly owned compressors stations and other emitting facilities arrayed along a thousand-mile long pipeline as “functionally interrelated” and therefore a single, sprawling “source.” An interpretation of “adjacent” and “source” that could open the door to such an outcome is grossly inconsistent with the “common sense notion of a plant.”

In addition, the U.S. Court of Appeals for the Sixth Circuit has held that EPA may not interpret the term “adjacent” in a manner that fails to take into account physical geographical proximity.⁹ The *Summit Petroleum* decision rejected a prior effort by EPA to interpret the term “adjacent” – as it appears in the current Title V regulatory definition of “major source” – so that activities or facilities could be considered “adjacent” provided that they are “functionally interrelated” and irrespective of their physical distance from one another.¹⁰ The court concluded that the EPA’s interpretation “undermines the plain meaning of the text, which demands, by definition, that

⁷ Proposed Rule at 56,590 (proposed regulatory text for Option 2, 40 C.F.R. § 51.166(b)(6)(ii)) (emphasis added).

⁸ 45 Fed. Reg. 52,694 (Aug. 7, 1980) citing *Alabama Power v. Costle*, 636 F.2d 323, 397 (D.C. Cir. 1979).

⁹ *Summit Petroleum v. EPA*, 690 F.3d 733 (6th Cir. 2012).

¹⁰ *Id.* at 743 citing *Rapanos v. United States*, 547 U.S. 715, 720-21 (2006).

would-be aggregated facilities have physical proximity.”¹¹ The *Summit Petroleum* holding applies with equal force to Option 2 in the Proposed Rule.

For these reasons, INGAA respectfully urges EPA not to finalize a rule that adopts Option 2 and applies that interpretation to the transmission and storage segment. INGAA does not have a view on the validity of Option 1.

INGAA appreciates the opportunity to comment on the Proposed Rule. If you have any questions or wish to discuss these comments further, please contact me at 202-216-5955 or at tpugh@ingaa.org.

Sincerely,

A handwritten signature in blue ink that reads "Theresa Pugh". The signature is written in a cursive, flowing style.

Theresa Pugh
Vice President, Environment, Health & Construction Policy

Mr. Bruce Moore, EPA, OAQPS

Mr. David Cozzie, EPA, OAQPS

¹¹ *Id.* at 744.