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November 18, 2015

U.S. Environmental Protection Agency
Air and Radiation Docket and Information Center,
Mail code 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460
Attention Docket ID No. EPA-HQ-OAR-2014-0606

Subject: Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country

Introduction

The National Tribal Air Association (NTAA) is pleased to submit these comments and recommendations regarding the U.S. Environmental Protection Agency's (EPA)'s proposed Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country, 80 Fed. Reg. 56554 (September 18, 2015) (Proposed Rule).

The NTAA is a member-based organization with 97 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important that EPA understands interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

The NTAA approves generally of the Proposed Rule. The oil and natural gas industry is causing millions of tons of methane, volatile organic compounds (VOCs), and hazardous air pollutants (HAPs) to be emitted into the air that are harming human health and the environment, and speeding up climate change. The oil and natural gas industry must be held accountable for these emissions. The

Proposed Rule helps create this accountability and helps to move the Obama Administration closer to its goal of reducing oil and natural gas sector methane emissions 40-45% below 2012 levels by 2025.¹

Nevertheless, the NTAA provides its comments and recommendations concerning the Proposed Rule with respect to the health and environmental impacts caused by emissions at oil and natural gas facilities; coverage of the entire oil and natural gas production process under the Proposed Rule; coverage of existing true minor oil and natural gas sources under the Proposed Rule; ability to provide comments about a facility's coverage under the Proposed Rule's federal implementation plan; and need to support tribal implementation plans in advancing the purpose of the Proposed Rule. However, the NTAA prefaces its comments and recommendations by advising EPA about what climate change means to Indian Tribes, understanding that the methane emitted by true minor sources engaged in oil and natural gas production plays a significant role in such change.

Indian Tribes and Climate Change

General

The oil and natural gas industry is one of the largest emitters of methane, a greenhouse gas with a global warming potential more than 25 times greater than that of carbon dioxide.² Methane pollution threatens public welfare in a number of ways by contributing to long-lasting changes in our climate that can have a range of negative effects on human health and the environment. The impacts vary regionally and seasonally and may include longer, more intense and more frequent heat waves; more intense precipitation events and storm surges; and less precipitation and more prolonged drought. The negative health effects associated with climate change are especially damaging for vulnerable populations including the elderly, young children, and those individuals already in poor health.

Indian Tribes are not immune from the effects of climate change. Like the rest of the nation, its populations are suffering from the health effects of climate change. Further, Tribes are seeing the effects of climate change through increased storm surges, erosion, and flooding; prolonged droughts never seen in modern times; and increased fires and insect pest outbreaks in their forests. These are just a few snapshots of what is happening on and around the lands of this nation's 567 federally recognized Tribes.

Indian Tribes are also affected much differently than the rest of the nation as their cultures are integrated into the ecosystems of North America; and many Tribal economies are heavily dependent on the use of fish, wildlife, and native plants. Even where Tribal economies are integrated into the national economy, Tribal cultural identities continue to be deeply rooted in the natural environment. As climate change disrupts biological communities, the survival of some Tribes as distinct cultures may be at risk. The loss of traditional cultural practices, due to

¹ "FACT SHEET: Administration Takes Steps Forward on Climate Action Plan by Announcing Actions to Cut Methane Emissions" at <https://www.whitehouse.gov/the-press-office/2015/01/14/fact-sheet-administration-takes-steps-forward-climate-action-plan-anno-1> (last visited October 30, 2015).

² Proposed Rule at 56599.

climate-driven die-off or range shift of culturally significant plant and animal species, may prove to be too much for some Tribal cultures to withstand on top of other external pressures that they face.

Climate-driven disruption of biological communities is also having a considerable effect on the treaty rights of Indian Tribes. Many such treaties preserve hunting, fishing, and gathering rights for Tribes on their lands and in the usual and accustomed areas. Some Tribes are finding that the animals and/or plants on which they depend for their cultural practices and identity have either migrated to lands not under their control or have disappeared altogether. How does one begin to value this type of loss for a Tribe? Further, methane emitted today can remain in the atmosphere up to 12 years,³ meaning that the full impacts of these emissions on Tribes and their culture may not be seen for many years into the future.

Regional

In May 2014, the NTAA released the Status of Tribal Air Report⁴ that highlights regional impacts from climate change:

Alaska: There is coastal erosion; melting permafrost threatens civil infrastructure in remote villages as well as food security as underground food cellars thaw; and Alaska Native Villages are unique because they face firsthand the effects of climate change, which has already resulted in the relocation of several villages away from eroding coastlines. A 2003 U.S. General Accountability Office study identified more than 200 Alaska Native Villages affected to some degree by flooding and erosion and 31 villages facing imminent threats that are compelling them to consider permanent relocation. The U.S. Army Corps of Engineers' March 2009 Alaska Baseline Erosion Assessment identified many villages threatened by erosion, but did not assess flooding impacts. At least 12 of the 31 threatened villages have decided to relocate—in part or entirely—or to explore relocation options (GAO, 2009).

Northwest: Changes in hydrology and water chemistry impact fisheries resources and shellfish (ocean acidification); and storm surges threaten coastal areas and Tribal lands along the coasts, which may result in the possible relocation of Tribes.

Southwest: Increased aridity threatens vegetation that is critical for stabilizing sediments which can lead to greater more severe and frequent dust storms and dune mobilization. Higher temperatures and increased droughts will lead to more intense forest fires and reduced grazing potential.

Plains: There are spreads of pests that previously could not survive cooler climates, potential increases in weed species due to more carbon dioxide in the atmosphere, higher temperatures, and changes in precipitation and decreases in soil moisture and water availability. The region's main water supply, the Ogallala Aquifer, is also threatened. Without alternative resources and better water management practices, projected temperature increases,

³ Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 80 Fed. Reg. 56593, 56598 (September 18, 2015).

⁴ http://www7.nau.edu/itep/main/ntaa/docs/resources/NTAA_2015StatusTribalAirReport.pdf

more frequent droughts, and higher rates of evaporation are likely to further stress the water supply.

Great Lakes: Heat waves are becoming more frequent, cold periods are becoming more rare, and snow and ice are arriving later in the fall and melting earlier in the spring. Ticks and mosquitoes will survive in greater numbers as winters become milder and will increase the risks of spreading diseases such as Lyme disease and West Nile virus.

Gulf Coast: Projected sea level rise, increased hurricane intensity, and associated storm surges may lead to further erosion, flooding, and property damage in the Southeast.

Northeast: Projected increases in heavy precipitation and likely sea level rise may lead to more frequent, damaging floods in this region. Large portions of the region may become unsuitable for growing some fruit varieties and some crops, such as cranberries, apples, blueberries, grain, and soybeans. Similarly, by the end of the century, only a small portion of the Northeast may be suitable for maple syrup production. In contrast, the region could see a longer growing season for a number of other crops, which would provide potential benefits to society.

NTAA recognizes that the Proposed Rule is a positive action towards reducing uncontrolled methane emissions in order to protect Indian Tribes and their cultures from climate change impacts, not only for current generations, but also for future generations to come.

Health and Environmental Impacts

The NTAA is deeply concerned about the HAPs, methane, and VOCs emitted throughout the oil and natural gas development cycle. HAPs, such as benzene, toluene, ethylbenzene, xylenes, and n-hexane, are linked to numerous human health hazards including cancer, reproductive, developmental, and neurological damage. Further, methane and VOCs are precursors to ground-level ozone which can cause a number of harmful health and environmental impacts.

Health Impacts

Exposure to ground-level ozone can harm the human respiratory system (the upper airways and lungs), aggravate asthma and other lung diseases, and cause premature death from respiratory and cardiovascular causes.⁵ Such effects can lead to increased visits to doctors, hospital admissions, and school absences; and may increase the risk of premature death from heart or lung disease.⁶

Indian Tribes and their members are disproportionately susceptible to the health effects of ground-level ozone. Exposure to ground-level ozone can adversely affect Tribal community members including children, Tribal elders, members with asthma, and others who gather and use plants of cultural significance. Several studies show that Native Americans and Alaska Natives

⁵ *Id.*

⁶ “Ground-Level Ozone: Health Effects” at <http://www3.epa.gov/ozonepollution/health.html> (last visited October 30, 2015).

have a disproportionate incidence of asthma and are at risk from exposure to ozone. Specifically, American Indian and Alaska Native children are 80 percent more likely to have asthma as non-Hispanic white children.⁷

Environmental Impacts

Ground-level ozone has also been shown to adversely impact the environment, which includes impacts on vegetation, ecosystems, and their associated services. Ground-level ozone causes visible foliar injury to plants and trees, decreased photosynthesis, changes in reproduction, and loss in forest growth and in the biomass of trees.⁸ Further, ground-level ozone can make sensitive species more susceptible to certain diseases, insects, competition, harsh weather, and other pollutants, which, in turn, can have adverse impacts to ecosystems such as changes to habit quality and water and nutrient cycles, and loss of species diversity.⁹ Some of these species can also include those on which Indian Tribes depend for subsistence, medicine, or other traditional practices that have existed since time immemorial.

The NTAA supports the Proposed Rule for the health and environmental benefits that it will provide based on an expected reduction in ground-level ozone, the result of methane and VOC emission reductions from oil and natural gas facilities.

Proposed Rule should cover entire oil and natural gas production process

The Proposed Rule will apply solely to true minor sources engaged in the production segment of the oil and natural gas sector.¹⁰ However, this leaves unregulated the natural gas production process, natural gas transmission and storage, and natural gas distribution segments. EPA indicates the reason for not regulating these latter three segments is that the production segment includes the majority of true minor sources in the oil and natural gas sector that would need to obtain a minor source permit in areas covered by the Federal Indian Country Minor NSR Rule.¹¹ This reason does nothing to address the other unregulated segments nor does the Proposed Rule indicate if or when such segments will ever be regulated, meaning that they will continue to pollute freely without consequence and continue to do harm to the health and natural environments of Indian Tribes.

The NTAA recommends that the Proposed Rule provide for the regulation of the natural gas production process, natural gas transmission and storage, and natural gas distribution segments of the oil and natural gas sector. Alternatively, the NTAA asks that EPA indicate whether it intends to regulate any or all of these three segments in the future, and if so, what is EPA's projected timetable for doing so.

⁷ "Asthma and American Indians/Alaska Native: Asthma" at <http://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlID=30> (last visited October 31, 2015).

⁸ "Ground-Level Ozone: Ecosystem Effects" at <http://www3.epa.gov/ozonepollution/ecosystem.html> (last visited October 30, 2015). Visible foliar injury is a visible bioindicator of ozone exposure in plant species, with the injury affecting the physical appearance of the plant.

⁹ *Id.*

¹⁰ Proposed Rule at 56554.

¹¹ *Id.* at 56562.

Existing Sources

The NTAA understands that the Proposed Rule will apply to true minor and minor modifications at existing true minor sources engaged in oil and natural gas production, and will not cover existing sources, one primary reason being that the focus of the Federal Indian Country Minor NSR Rule is on new and modified oil and natural gas sources.¹² Further, EPA indicates that, unlike NSR general permits and permits by rule, a federal implementation plan (FIP) could be extended to existing sources, and that EPA is prepared to address such sources, to the extent necessary, through area- or reservation-specific FIPs.¹³ Unfortunately, EPA does not appear to want to go any further in regulating existing sources, under this FIP nor any other FIP or regulatory action. The NTAA disagrees wholly with EPA on this decision.

EPA acknowledges that a commenter on the Advance Notice of Proposed Rulemaking “Managing Emissions from Oil and Natural Gas Production in Indian Country” indicated that existing true minor source oil and natural gas facilities are having harmful impacts to the health and welfare of Tribal members.¹⁴ Another commenter indicated that, in response to the Federal Indian Country Minor NSR Rule, EPA Region 8 received approximately 6,300 registrations from existing minor sources in the natural gas sector, demonstrating such sources are responsible for considerable air pollution emissions within Indian Country,¹⁵ such as methane and VOCs, pollutants that NTAA has already identified as having health and environmental impacts to Indian Tribes. The NTAA finds it egregious that EPA would not want to regulate existing sources beyond those for which it makes a determination that an area- or reservation-specific FIP is necessary, considering that in the aggregate, such sources will surely have negative impacts on Indian Country.

The NTAA recommends that EPA develop an approach for regulating existing true minor source oil and gas facilities in Indian Country apart from the Proposed Rule that, not only takes into account those parts of Indian Country where EPA finds an area- or reservation FIP is necessary for existing sources, but addresses existing sources throughout all of Indian Country. Such an approach could include the use of FIPs, general permits, or permits by rule.

Ability to Comment about Facility’s Coverage under FIP

The Proposed Rule’s use of a FIP to regulate true minor sources engaged in oil and natural gas production fails to provide Indian Tribes or any of their members with an opportunity to provide comments to EPA about a facility’s coverage under the FIP, unlike the comment process available under a general permit. EPA acknowledges this, but indicates that the FIP contains requirements for emissions controls, compliance monitoring, and reporting that would help prevent a facility from causing or contributing to national ambient air quality standard (NAAQS) or prevention of significant deterioration (PSD) increment violation.¹⁶ Further, EPA indicates that any citizen can enforce the provisions of a FIP by commencing a civil action in the

¹² *Id.* at 56570.

¹³ *Id.* at 56568.

¹⁴ *Id.* at 56569.

¹⁵ *Id.*

¹⁶ *Id.* at 56568.

district court in the judicial district in which the source is located.¹⁷ However, a Tribe or individual might have other concerns about a facility, beyond NAAQS or PSD increment violations, about which they might want to provide comments, and a civil action is intended to address a FIP violation, not issues that might cause concern to a Tribe or its members prior to a facility being covered by a FIP.

The NTAA recommends that EPA provide a clear means by which Indian Tribes, their members, or any member of the public can provide comments to EPA about a facility's coverage under the FIP.

Need to Support Tribal Implementation Plans

Title 40 C.F.R. § 49.11(a) provides that EPA shall promulgate FIP provisions as are “necessary or appropriate to protect air quality.” The NTAA finds that there is a need to protect air quality in Indian Country that is jeopardized currently by the growing number of true minor sources classified as oil and natural gas facilities. The Proposed Rule offers full regulatory coverage of such facilities in Indian Country by its requirements involving emissions limitations and standards, monitoring, and testing and recordkeeping and reporting. However, EPA must provide Indian Tribes with the requisite resources to develop and implement tribal implementation plans (TIPs) to assume regulatory control over the true minor sources located within their jurisdictions that are engaged in oil and natural gas production.

The Proposed Rule's FIP “one size fits all” approach fails to account for the different conditions of the Tribal lands on which true minor sources engaged in oil and natural gas production will be located. Tribal lands can be located geographically along coastal areas, in arid and wet regions, on plains, among mountainous areas, and within valleys. The meteorological conditions for such lands vary as well such as differing wind directions and speeds, and the susceptibility to air inversions. Further, the oil and natural gas reserves located under Tribal lands can influence the number and type of oil and natural gas facilities that locate on such lands. Ultimately, Indian Tribes are the best governmental entities to regulate true minor sources within their jurisdictions that are engaged in oil and natural gas production and to effectuate the best possible air quality for their members and natural environment.

The NTAA recommends that EPA provide Indian Tribes with an affirmative commitment under the Proposed Rule that it will provide such Tribes with the resources necessary to develop and implement TIPs for regulating true minor sources engaged in oil and natural gas production, and to also provide similar resources for the future regulation of true existing minor sources engaged with such production.

¹⁷ *Id.*

Conclusion

In summary, the NTAA is pleased to provide the aforementioned comments and recommendations concerning the Proposed Rule.

On Behalf of the NTAA Executive Committee,

A handwritten signature in black ink, appearing to read "Bill Thompson". The signature is fluid and cursive, with a large initial "B" and "T".

Bill Thompson, Chairman, NTAA