



VIA ELECTRONIC FILING

May 1, 2017

US Environmental Protection Agency
Attn: David Turk, 2844T
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: Docket No. EPA-HQ-TRI-2016-0390: Addition of Natural Gas Processing Facilities to the Toxics Release Inventory (TRI); Federal Register Vol. 82, No. 4 (Friday, January 6, 2017)

Dear Mr. Turk:

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency (EPA) pertaining to the proposed addition of natural gas processing (NGP) facilities to the Toxics Release Inventory (TRI). GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products (NGLs) such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing. GPA Midstream members operate NGP facilities across the U.S. and will be directly impacted by this EPA proposal.

On January 6, 2017 EPA issued a proposed rule that would add NGP facilities, SIC Code 1321 and NAICS Code 211112, to the list of industries required to report to TRI under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313, and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA estimates that at least 282 natural gas processing facilities in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use one or more TRI listed chemicals in excess of applicable threshold quantities. EPA estimates that natural gas processing facilities manufacture, process, or otherwise use more than 21 different TRI-listed chemicals, including n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol.

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Currently, TRI reporting from NAICS 211112 is limited to those facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic chemicals, NEC (recovering sulfur from natural gas)). The proposed rule would remove this regulatory limitation on the sector, extending reporting requirements to also include any processing site primarily engaged in the recovery of liquid hydrocarbons from oil and gas field gases.

For the reasons stated below, GPA Midstream requests that EPA withdraw the proposed rulemaking and continue exempting NGPs from TRI reporting requirements unless the facilities perform sulfur recovery.

1. General Comments – Lack of Fair Notice

GPA Midstream believes the proposed rule was improperly vetted on inadequate data, and unnecessarily rushed for publication in the federal register with no outreach to the affected industry. Even with an additional 60-day extension, the comment period provided simply does not afford affected stakeholders enough time to thoroughly analyze EPA's background and supporting documents, nor does it allow stakeholders sufficient time to accurately analyze the scope of NGP facilities that will be impacted by the proposed rule.

The last time EPA proposed to add industry sectors to the TRI program in 1996 [61 FR 33588], EPA held extensive public outreach with the affected industries and other stakeholders for a significant period of time, beginning in 1992, prior to the actual proposed rule being published [see Outreach descriptions at 61 FR 33590-91 and 62 FR 23835]. Those four years of pre-proposal outreach efforts served to directly engage and inform the affected industry groups of EPA's intentions and allowed EPA to gather relevant information for development of the proposed rule. Upon publication of that proposed rule on June 27, 1996 [61 FR 33588], EPA initially provided a 60-day comment period, but subsequently granted an additional 30-day comment period extension [61 FR 44281, and as noted at 62 FR 23837]. Despite the extensive pre-publication advance outreach efforts that had been performed to prepare the industry stakeholders for that rulemaking, EPA granted a comment deadline extension. It is unclear why EPA is now unwilling to do so.

Many NGP facility personnel have no prior experience with the TRI program, and many companies will be required to analyze and develop an entirely new regulatory program. There has been no pre-proposal outreach to the NGP industry by EPA. However, the level of effort required to become sufficiently familiar with the TRI program requirements, such that it can comment effectively, is higher now than in 1996 because there have been expansions of the program (such as additions to the TRI chemicals list) and new and revised regulatory requirements and guidance issued in the last 20 years. Given the general lack of pre-proposal outreach to the industry with regard to adding NGP facilities to the program and the level of effort needed by a new sector to familiarize itself with the extensive details and requirements of

the program and assess the potential impacts, it is appropriate for EPA to grant at least an additional 60 days for comments.

2. Improper use of Canadian National Pollutant Release Inventory data

EPA has relied upon NGP facility reporting data within the Canadian National Pollutant Release Inventory (NPRI) as a basis for requiring U.S. NGP facilities to report information under TRI. U.S. and Canadian facilities have similar reporting thresholds and requirements for the two chemical/pollutant registries and there are similarities between the industries in the two countries. In line with U.S. reporting requirements, Canadian facilities are required to report on listed toxic chemicals if they were manufactured, processed, or otherwise used in a quantity of 10 tonnes (22,046 lb) or more and if employees worked 20,000 or more hours at the facility during the reporting year. TRI and NPRI have similar coverage of toxic chemicals commonly manufactured, processed, or otherwise used by NGP facilities. U.S. and Canadian NGP facilities processes similar raw material and use similar unit operations such as dehydration, containment removal, natural gas liquids extraction, and fractionation.

An analysis of the Canadian NPRI 2015 data set for 360 “gas plants” indicates that almost all releases (92%) of chemicals like n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol, are air emissions with a total of 56 facilities reporting for 11 common chemicals. While there may be additional gas plants not identified as such by their facility name, a significant portion of NPRI facilities, likely to be NGP facilities, are analyzed here.

The NPRI 2015 data set indicates there were no releases reported to the categories of water and on-site land (less underground injection). Because of the nature of the gas fields in Canada, releases to underground injection may be the method preferred by Canadian Gas Plants and less so for those in the U.S. as the nature of the gas fields here are uniquely different. Releases of air emissions and waste disposal records at U.S. NGP facilities are currently available to EPA through other sources such as annual emission inventories and waste manifests filed with each state agency. Also, almost all NGP facilities file air permits with the EPA and potential release of these chemicals is available to the public either during the public comment period or upon request to the relevant regulatory agency.

GPA Midstream does not understand how the Canadian data used in EPA’s analysis demonstrates the need to add all NGP facilities to the TRI or supports the proposed rulemaking in any way. EPA has selected only certain information from the NPRI datasets to support the need for regulation under TRI. For releases to air, there is no other “meaningful information” that U.S. NGP facilities would be reporting to TRI other than the quantity released from point sources and fugitive sources. Any other releases to land or water that would be significant enough to reach TRI reporting thresholds would already be reported to state agencies and/or EPA through other regulatory programs.

3. The intent of TRI is already being met and data is already available through other state and federal programs, and adding NGP facilities to the list of industries reuried to report to TRI is redundant and unnecessary

EPCRA section 313(b)(1)(B), 42 U.S.C. 11023(b)(1)(B), states that the Agency may “add or delete Standard Industrial Codes for purposes of subparagraph (A), *but only to the extent necessary to provide that each Standard Industrial Code is relevant to the purposes of this section.*” (emphasis added). The general intent and relevance of TRI, is to make information on chemical releases publicly available. This is already being met through a large number of state and federal regulations applicable to NGP facilities. As noted in the Canadian data discussed above, and as is the case in the United States, the vast majority of releases associated with NGP facilities are air emissions. In most states where NGP facilities operate, e.g., Colorado, Kentucky, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia, the facilities are already required to submit annual air emissions inventories to the state agencies, and these are publically available. Accordingly, the addition of NGP facilities to the TRI is redundant *and is therefore not relevant to the purposes of EPCRA Section 313.* As such the statutory authority for adding NGP facilities to TRI is absent. Additionally, as previously stated, NGP facilities are required to report spills and releases, and track waste disposal activities. NGP facilities are required to obtain air permits which include information on the types and amounts of chemicals to be emitted at a facility. Semiannually, these facilities are required to report any deviations from their air permit conditions or state that they operated in compliance. Large unpermitted releases to the environment are required to be reported to state and or federal agencies. Further, emission inventories are submitted annually for regulated entities to report on actual emissions released to the atmosphere. Much of the pertinent data reported under TRI is, in fact, already in EPA’s own files due to existing regulatory programs under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. In most cases, state regulatory agencies will possess the data reported under TRI. Consequently, the majority of air emission and chemical release and disposal information is already accessible within the public domain. The useful information already provided to state and federal governmental agencies, and thus available to the public, focuses on immediate potential risks from actual emissions and releases to the environment. Adding NGP facilities to the TRI simply adds yet another layer of regulatory reporting and recordkeeping requirements upon industry, with a significant administrative burden that has little to no benefit.

This industry group provides the following reports:

- Annual Air Emission Inventories. These report on the chemicals that are actually attributable to the facilities and thus properly permitted with established limits for those chemicals. The inventories reflect that the facilities are operating within those permitted limits.
- Semi-Annual Compliance Certifications. These certify that the facility is operating within the permit conditions and verify that if any permit conditions were not met that facility has duly reported any permitted excursions to the proper regulatory agency.

- Permit Excursion Reporting. Should a facility exceed a permit limitation either by unintentional release or operational issues, the facility is required to report to the proper state or federal agency.
- Spill Reporting. Should a facility have a spill that exceeds a state or federal reportable quantity (RQ), it is required to make a verbal and written report of the spill to the proper state or federal agency.
- Risk Management Plans (RMP). These facilities are subject to EPA's RMP Rule (40 CFR 68). The rule includes a [List of Regulated Substances](#) (similar to the chemicals in this TRI Rule) under section 112(r) of the Clean Air Act, including their synonyms. The RMP includes a hazard assessment that details the potential effects of an accidental release, an accident history of the last five years, and an evaluation of worst-case and alternative accidental releases; a Prevention program that includes safety precautions and maintenance, monitoring, and employee training measures; and Emergency response program that spells out emergency health care, employee training measures and procedures for informing the public and response agencies (e.g the fire department) should an accident occur.
- Discharge Monitoring Reports (DMRs). If facilities have an industrial water discharge, they fall under EPA's National Pollutant Discharge Elimination System (NPDES). The Clean Water Act prohibits anybody from discharging "pollutants" through a "point source" into a "water of the United States" unless they have an NPDES permit. The permit will contain limits on what you can discharge, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health. In essence, the permit translates general requirements of the Clean Water Act into specific provisions tailored to the operations of each person discharging pollutants.
- Tier II Annual Submittal. Submission of the Tier II form is required under Section 312 of EPCRA. The purpose of this form is to provide State, local officials, and the public with specific information on potential hazards. This includes the locations, as well as the amount, of hazardous chemicals present at a facility during the previous calendar year.

The above mentioned government-required reporting provides the general public with pertinent information so that they can be well educated on the facilities located in and around their communities. The addition of this industry group to the TRI rule will not provide additional public benefit and will create an overly burdensome task of complying with the data gathering and reporting for the affected industry group.

4. Adding NGP facilities to TRI creates a significant administrative burden on industry

EPA has underestimated the full cost of the proposed rule on industry and did not adequately assess the potential administrative burden of tracking and recordkeeping. Although EPA

estimates that there are approximately 21 chemicals that are regularly used by NGP facilities and would be subject to TRI reporting, compliance with the regulation would also require NGP facilities to track numerous other chemicals that will never reach the de minimis reporting thresholds. The EPA estimated total incremental cost of the proposed rule—the sum of annualized industry costs and Agency costs—ranges from approximately \$4,634,000 to \$7,300,000 with a 3% discount rate and approximately \$4,721,000 to \$7,437,000 with a 7% discount rate. The EPA analysis only accounts for industry costs associated with preparing and submitting forms and does not account for costs associated with tracking and analysis of chemicals that are below the de minimis threshold but required to be tracked as part of the 650 plus substances under EPCRA section 313. Adding NGP facilities to TRI would require the tracking of numerous chemicals that could, but likely may, never reach the reporting threshold amounts. GPA Midstream members that currently have facilities already subject to TRI indicate that significant company resources are spent tracking chemicals that are never reported under TRI. EPA’s proposal to expand this requirement across entire NGP sector is a substantial waste of industry resources with no obvious benefit.

5. Concern over misuse/misrepresentation of data

GPA Midstream firmly believes in operating responsibly and complying with state and federal regulations meant to protect the public and the environment. However, we are concerned that TRI data reported by NGP facilities could be misused and misrepresented by anti-fossil fuel activists and the media in several possible ways. With the shale play driven growth in the oil and gas industry over the last decade there has also been a focused and proactive anti-fossil fuel campaign by some organizations that routinely misrepresent the oil and gas industry’s environmental impacts and compliance activities. Such organizations may be represented within the group of petitioners that proposed adding the oil and gas industry sector to TRI. Environmental activist groups have begun to use litigation and public protests as a means of preventing fully approved and permitted projects from being constructed. These activities undermine trust in regulatory agencies, diminish certainty in the regulatory process, create unnecessary public discord, and increase project costs substantially, ultimately impacting the consumer. It is reasonable to suspect that information within TRI from NGP facilities could be used for litigation purposes or to interfere with new projects. While TRI captures some unintended releases, it also includes permitted and environmentally compliant release and disposal activities (also defined as “releases”) that can easily be easily misrepresented.

6. Additional recommendation to EPA

Once again, GPA Midstream requests that the EPA completely withdraw the proposed rule adding NGP facilities to the TRI for the reasons explained above. However, if EPA does not withdraw the proposed regulation as GPA Midstream has requested and decides to move forward with the rulemaking, then GPA Midstream strongly suggests the following:

- a. EPA should reduce the scope of the proposed rule to focus only on the chemicals of concern from NGPs. EPA has stated that approximately 21 chemicals are used by NGPs; however, NGPs will be required to track and analyze numerous other chemicals that would never reach de minimis reporting thresholds. EPA should only require NGPs to track and report the chemicals of highest concern (assumed to be the 21 stated chemicals) or only those chemicals are the most common to reach TRI threshold amounts.
- b. EPA should allow sufficient lead time to comply with the rule. If finalized as proposed reports should not be due until at least 2019. At a minimum, GPA Midstream anticipates the following would be required of its members:
 - o Determining whether the addition of NGP facilities to TRI reporting has relevance to the purposes of the TRI Program
 - o Assessing the number of potentially affected facilities, and the related administrative and resource burdens associated with the rule's requirements
 - o Identifying, analyzing and evaluating the chemicals, and chemical categories specific to NGP facilities that would require reporting under the TRI
 - o Identifying chemical releases/discharges/emissions at NGP facilities
 - o Creating new regulatory programs and educating NGP facility staff that are unfamiliar with TRI on its requirements

7. Conclusion

In summary, the proposed rule is an unnecessary expansion of government regulation where the evidence as presented in the Docket does not support the need to add NGP facilities to the list of industries required to report to TRI under EPCRA. GPA Midstream requests that EPA withdraw the proposed rulemaking and continue exempting NGP facilities from TRI reporting requirements unless the facilities perform sulfur recovery. We believe the added cost to industry to report the requested data into TRI is underestimated, duplicative, a wasteful use of resources and simply not justified. In addition, stakeholders have not been given sufficient time to accurately analyze the scope and impact to NGP facilities by this proposed rule. The proposed rulemaking should be reviewed by the incoming Administration from the perspective of regulatory reform and efficiency Administrator Pruitt should be afforded the opportunity to decide whether or not to implement the proposed rule.

GPA Midstream appreciates the opportunity to submit comments on the EPA's proposed addition of NGP facilities to the TRI. We offer our continued assistance to the EPA as it evaluates comments and our members remain available to provide additional data or answer questions that EPA may have. If you have questions, please contact me at (202) 279-1664 or by email at mwhite@GPAglobal.org.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association