

Program Supervisor, MC 205
Texas Register/Rule Development Team - Office of Legal Services
Texas Commission on Environmental Quality
P.O. Box 13087 Austin, Texas 78711-3087

RE: Proposed Rule Project Number 2024-027-113-AI

Dear Program Supervisor, MC 205,

The Permian Basin Petroleum Association (“PBPA”) appreciates this opportunity to provide unofficial comment on the Texas Commission on Environmental Quality’s (“TCEQ”) request for input on the necessary rulemaking and state plan (together referenced as the “rulemaking”) prompted by the U.S. Environmental Protection Agency’s (“EPA” or the “Agency”) new emission guidelines and updated New Source Performance Standards (“OOOOC”).

PBPA is the largest regional oil and gas association in the United States. We represent the men and women who work in the oil and gas industry in the Permian Basin of West Texas and southeastern New Mexico. The Permian Basin is the largest inland oil and gas reservoir and the largest oil and gas producing region in the United States. PBPA consists of the largest producers as well as the smallest operators and service providers in the Permian Basin. Part of the PBPA’s mission is to promote environmentally conscious operations and sustainable economic profitability among all our members, large and small. PBPA’s members will be directly or indirectly regulated by the proposed rulemaking when finalized. The comments provided herein include some background as to our original concerns with EPA’s OOOOC and some recommendations for TCEQ to take into consideration in its rulemaking.

Conflicts with State Law and Failure to Apply Cooperative Federalism

While we will not restate each of the concerns we expressed to EPA during its rulemaking regarding OOOOC, we did want to inform TCEQ that PBPA requested EPA allow states to adopt existing source performance standards that take a different form of numerical standards than the “presumptive” numerical standards that EPA had proposed, and ultimately adopted, as long as states could demonstrate equivalency. Section 111(d) of the Clean Air Act only requires EPA to “establish a procedure” under which each state can submit existing source performance standard plans, as opposed to requiring EPA to establish “presumptive” numerical standards. It was misguided of EPA to predetermine that states, particularly Texas, could not demonstrate equivalency, whether on a source category or programmatic level, because an overly prescriptive approach would eliminate flexibility needed to make adjustments to accommodate advancements in technology and operational practices. We recommend TCEQ push back on these standards as even EPA previously admitted that OOOOC may have federalism implications because of the burden and cost to the state of developing this rulemaking. Such a rulemaking would be far less burdensome if states were allowed to demonstrate equivalency.

Need for a Cost/Benefit Analysis & Federalism Concerns

PBPA membership is strongly in favor of increases in efficiency and effectiveness in the capture and utilization of all hydrocarbons, including methane, for environmental and economic purposes. However, there are numerous concerns or faults within EPA’s finalized OOOOC which will result in lost production from existing oil and gas assets and, in turn, lost revenue for not just private interests but for the State of Texas, with little to no measurable increase in the efficiency or effectiveness of the capture of hydrocarbons.

To understand the full impact of this rulemaking, a cost/benefit analysis should be conducted. For most if not all operators the compliance cost of the rule will be incredibly significant and will negatively impact the

profitability of marginal wells. Smaller operators who rely on production only from marginal wells will be impacted the most by such an action. As part of compliance, if operators choose to plug marginal or low producing oil wells, many of which no longer produce measurable natural gas, testing costs and documentation are still required under OOOOc. Again, this will result in lessened oil production for Texas, lessened revenues through taxes for Texas, and little to no reduction in emissions.

Concerns with Rules for Marginal Produced Associated Gas Wells

We understand the purpose of the proposed rulemaking is to implement the emission guidelines per OOOOc and to ensure that the State of Texas maintains the authority to regulate existing oil and gas facilities. However, we greatly encourage TCEQ to take the time necessary to understand the faults with OOOOc and to take the opportunity, particularly under the Remaining Useful Life and Other Factors (“RULOF”) provision found in OOOOc, to construct a rule in Texas that takes into consideration the different operating conditions of (1) gas wells vs. oil wells with associated gas production and, further, (2) high producing oil wells vs. low volume oil wells.

EPA has proposed two categories for existing wells with associated gas. For those wells with more than 40 tons per year (“tpy”) of methane, associated gas is to be routed to a sales line, utilized for another useful purpose, or routed to a flare if an annual engineer-certification demonstrates that other options are technically infeasible. For those wells with less than 40 tpy of methane, the same options are applied except that flaring is allowed without the technical infeasibility demonstration. Even if an operator is authorized to flare, an extensive closed vent system (“CVS”) and control device are required for such a site. For low producing wells that do not generate high levels of cash flow, these costs could very well make such locations uneconomical, resulting either in plugged wells and lost production or, even worse, abandoned wells.

In reaching the conclusions on differentiating the classes of associated gas wells, EPA’s cost spreadsheet utilized venting and flaring data reported under 40 CFR 98, Subpart W data for 2019. Smaller marginal oil well operators do not report under Subpart W and therefore the cost analysis conducted by EPA is biased towards larger operators and newer production. Further, because of the data set used, EPA performed no analysis of the actual cost-to-benefit for marginal well operators, because marginal well data was not available through Subpart W reporting. Since marginal wells with legacy production often have low gas flows, there is little to no gas to capture. Since the cost effectiveness calculations ignored wells that produce minimal associated gas, TCEQ should take the opportunity under RULOF to rectify this short sighted analysis and implement rules that are appropriate for marginal oil wells with low amounts, and at times immeasurable amounts, of associated gas production.

The EPA used one representative well for all gas recovery control options when analyzing for cost effectiveness and this one size fits all approach is not just inappropriate from state to state, but inappropriate and inaccurate from well to well. Higher volume gas production is more often than not associated with newer, high volume oil production. Using such a representative well and not incorporating marginal well production from older, legacy wells into an analysis skews the average gas production per oil well higher especially as gas production reduces over time.

Based on the 2019 Subpart W data set utilized by EPA, approximately 20% of wells had methane emissions lower than 0.2 tpy, yet EPA asserted that routine venting of associated gas would result in higher emissions. EPA’s assertion is unsubstantiated in the rulemaking documents. Some oil wells produce minimal associated gas, yet EPA provided for no minimum threshold. EPA’s cost effectiveness becomes asymptotic at low methane emission rates, yet there are ~300,000 oil wells that produce less than 10 barrels of oil equivalent (“BOE”) per day.

The data utilized on attachment 18 at EPA-HQ-OAD-2021-0317-3989 assumes operating costs for a flare as \$66,822/yr. A site that produced 2 BOE/day would yield approximately \$31,938/year in gross revenue based

on EPA's analysis. Even if this site generated immeasurable amounts of natural gas, a flare would be required, making the well uneconomical.

Concerns with Other Oil Wells that Produce Associated Gas

Sites that produce more than 40 tpy of methane emissions can only flare that gas due to technical or safety infeasibility under OOOOc. This requires a detailed analysis be prepared and certified annually by a professional engineer or other qualified person. Many smaller operators will need to hire either additional in-house staff or contract outside the company for this service annually. EPA did not include the costs for such professional services in its cost benefit analysis. OOOOc provides minimal guidance on how to conduct the detailed analysis to determine technical or safety infeasibility, but in this analysis, costs cannot be considered. Costs can vary highly by producing basin, yet EPA's cost effectiveness calculations only consider national averages. Again, this one size fits all approach is not appropriate and TCEQ should look to take into consideration differing regional or basin-based costs.

As mentioned previously, sites that use a flare must meet control device and CVS requirements. These requirements can be overly burdensome and expensive for small sites which do not have remote communications and are visited infrequently, again this shows these rules are biased against smaller operators. Unchanged, the requirements will include:

- CVS initial and periodic (AVO/OGI/Method 21) inspections [40 CFR 60.5416c(b)(1)];
- CVS design assessment certified by an engineer [40 CFR 60.5411c(c)(1)];
- Monthly visible emissions monitoring [40 CFR 60.5417c(d)(8)(v)];
- Net heating value ("NHV") continuous monitoring or 14 consecutive day sampling [40 CFR 60.5417c(d)(8)(ii)];
- Inlet flow monitoring or document an exemption with monitoring [40 CFR 60.5417c(d)(8)(iv)]; and,
- Flare pilot monitoring, recordkeeping, and alerting [40 CFR 60.5417c(d)(8)(i)].

Recommendations for TCEQ

We recommend that TCEQ utilize the RULOF provisions of OOOOc to define a different class of facilities for associated gas from oil wells [§60.24a(e)]. In justifying this different class, TCEQ should cite the unreasonable cost of control based on the age, basic process design, and other circumstances, such as regional differences [§60.24a(e)(i) & (iii)]. Further, TCEQ should note that there are fundamental differences between marginal oil well sites and the representative site that EPA used in the cost effectiveness calculations [EPA-HQ-OAR-2021-0317-3989_attachment_18] because (1) Subpart W data biases to newer and high production wells, (2) costs for wells with low volumes of associated gas were not properly considered, and (3) marginal well sites cannot absorb the cost of flares and associated monitoring equipment.

TCEQ's rules should incorporate a minimum threshold of 10 tpy methane under which no action is required. The rules should also allow for cost to be a consideration in the technical feasibility demonstration. This allows for local, regional, or basin factors to be fully considered (i.e. in some regions, the price of natural gas trades at a significant discount to the national average). Additionally, the rules should reduce the complexity and burden of CVS and control device requirements for marginal wells and for sites with associated gas less than 40 tpy that choose flaring. The rules should allow for audio, visual and olfactory (AVO) to be used for any CVS inspections. They should eliminate the design assessment for a CVS system that is hard-piped into a flare and eliminate the NHV monitoring and sampling requirements since this generally is not a concern for associated gas. Lastly, the rules should replace the flare pilot remote alarming and data logging with a manual check and logsheet at each visit.

By addressing these concerns, the TCEQ can implement a rule that balances environmental responsibility with the operational realities of smaller oil well operators. Practical, cost-effective solutions—such as lowering

thresholds and streamlining monitoring—will ensure compliance without jeopardizing the economic viability of marginal wells.

On behalf of our members, we respectfully submit these comments to TCEQ and request they be taken into consideration in finalizing the rulemaking. The PBPA appreciates your time in reviewing and considering these comments.

Regards,

A handwritten signature in blue ink that reads "Ben Shepperd". The signature is written in a cursive style with a large initial "B".

Ben Shepperd
President
Permian Basin Petroleum Association