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Natural Gas Processing (NGP) Facilities Now Required to Report to EPA for the Toxics Release Inventory

On November 24, 2021, the EPA added natural gas processing (“NGP”) facilities to its list of facilities required to report information for inclusion in the Toxics Release Inventory (“TRI”). Created in 1986, the TRI is an informational program that requires certain categories of industrial facilities to produce information regarding how they are managing toxic chemicals. The TRI is intended to increase public awareness of localized pollution by establishing a public database containing information on toxic chemical releases and other waste management activities provided directly by the responsible businesses. However, not all industrial facilities are required to report under the TRI, limiting its utility and potentially creating false impressions regarding both the state of the local environment and the sources of local pollution.

EPA’s final rule—titled “Addition of Natural Gas Processing Facilities to the Toxics Release Inventory”—adds NGP facilities to the list of TRI-regulated facilities. See 86 Fed. Reg. 66,953 (Nov. 24, 2021), <https://www.federalregister.gov/documents/2021/11/24/2021-25646/addition-of-natural-gas-processing-facilities-to-the-toxics-release-inventory>; see also EPA, Addition of Natural Gas Processing Facilities to the Toxics Release Inventory Final Rule, <https://www.epa.gov/toxics-release-inventory-tri-program/addition-natural-gas-processing-facilities-toxics-release>. The rule covers NGP facilities categorized under Standard Industrial Classification (“SIC”) code 1321 (“Natural Gas Liquids”) with ten or more full-time employees. Facilities that *extract* natural gas through exploration, fracking, or other techniques that are covered by North American Industry Classification System (“NAICS”) code 211130 (“natural gas Extraction”) are generally not covered by the rule unless they are also covered under 1321. Covered NGP facilities must now monitor emissions of at least twenty-one different chemicals, including “hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol.” As a result of this rule, an estimated 300 NGP plants will now be required to file a TRI report, costing between \$11.8



million and \$18 million for industry-wide compliance in the first year alone. See See 86 Fed. Reg. 66,953 (Nov. 24, 2021), <https://www.federalregister.gov/documents/2021/11/24/2021-25646/addition-of-natural-gas-processing-facilities-to-the-toxics-release-inventory>.

According to the rule, approximately 1.4 million people live within three miles of a plant now required to report. Because many NGP facilities are located near disadvantaged communities, the final rule fits comfortably within the Biden Administration’s environmental justice agenda. The rule specifically notes that and that it is intended to provide information to “communities where there are potential Environmental Justice considerations” in order to “promote sustainability, inform community-based environmental decision-making, and work toward environmental justice with the goal of achieving environmental protections for all communities.”

The final rule will be effective on December 27, 2021, with the reporting year beginning on January 1, 2022. Reporting data is due by July 1, 2023. According to EPA, those required to report should follow four steps:

1. Collect data on the TRI chemicals managed at the facility
2. Register for and prepare the facility’s reporting forms
3. Certify the forms to the EPA by July 1, 2023
4. Continue to monitor and follow best practices at the facility

Notably, the final rule also comes on the heels of the EPA’s sweeping effort to reduce methane emission from the oil and gas industry, reemphasizing the Biden Administration’s agenda of fighting global climate change by reducing national use and dependence on fossil fuels. See Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 Fed. Reg. 63,110 (Nov. 14, 2021), <https://www.federalregister.gov/documents/2021/11/15/2021-24202/standards-of-performance-for-new-reconstructed-and-modified-sources-and-emissions-guidelines-for>. King & Spalding has covered the proposed Methane rule, see Client Alert, EPA’s Proposed Methane Rule to Increase Regulatory Burden on “Super Pollutant” (November 3, 2021), <https://www.kslaw.com/news-and-insights/epas-proposed-methane-rule-to-increase-regulatory-burden-on-super-pollutant>. In addition to advising on TRI reporting requirements, the EHS team can assist affected industry members with preparing comments to the proposed methane rule (the deadline for public comment is January 14, 2022).

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