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Via e-mail

George (Tad) Aburn
Director
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Maryland Department of the Environment
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RE: Comments on June 28, 2019 Draft of Proposed COMAR 26.11.28, Control of Methane Emissions from the Natural Gas Industry

Dear Mr. Aburn:

The Environmental Integrity Project (“EIP”), the Chesapeake Bay Foundation, Chesapeake Climate Action Network, and Sierra Club (collectively, “Commenters”) submit the following comments as part of the public stakeholder process on the Maryland Department of the Environment’s (“MDE’s”) development of regulations limiting methane emissions from certain natural gas facilities in Maryland. Specifically, these comments address the version of Proposed COMAR 26.11.28, Control of Methane Emissions from the Natural Gas Industry, that was circulated by MDE on June 24, 2019 and captioned as the June 28, 2019 Draft (hereinafter “Draft Regulation”).

Introduction

We are submitting this letter in response to the request made by MDE staff at the 6/28/19 stakeholder meeting that written comments be submitted on the Draft Regulation by July 19, 2019. Based on that meeting, Commenters understand that additional, non-regulatory programs relating to control of methane from natural gas facilities in Maryland will be discussed during a separate phase of MDE’s stakeholder process to commence in the late summer or early fall of this year. Specifically, this piece of the process, referred to as “Non-Traditional Reduction Opportunities” and “Voluntary, Data-Driven Opportunities” in MDE’s 6/28/19 PowerPoint Presentation, will address Methane Mitigation Measures, Methane Offsets, Community Meetings/Involvement, and an Air Quality Indicators Network that appears to be related to fenceline ambient monitoring.¹

In general, Commenters are concerned about a non-regulatory and unenforceable approach to programs. Such programs are generally less reliable than mandatory and

¹ MDE 6/28/19 meeting PowerPoint presentation, p. 9, at <https://mde.maryland.gov/programs/Regulations/air/Documents/NG-Presentation-Meeting-062819.pdf>.

enforceable requirements set forth in regulations. We are particularly concerned regarding a voluntary approach to the indicators network/air quality monitoring program, and we intend to scrutinize closely that program when it is discussed as part of the stakeholder process. In addition, Commenters are very concerned about the anticipated methane offsets program, particularly if industries are allowed to “offset” methane emissions using community projects that are entirely unrelated to methane or even to pollution (e.g. by purchasing a library for a community). Allowing industries to emit excess methane emissions without actually achieving any methane reductions elsewhere is inconsistent with MDE’s obligation under the Greenhouse Gas Reduction Act (GGRA) to reduce greenhouse gases (GHGs) in Maryland, and it will not help to address flooding, extreme temperatures, and the other crises that Marylanders will face on an increasing basis as the effects of climate change worsen.

Finally, Commenters appreciate MDE’s commitment, as expressed at the 6/28/19 stakeholder meeting, to share all written comments submitted on the Draft Regulation with all stakeholders. This will help to promote transparency, particularly for environmental advocates and affected community members reviewing technical approaches to this regulation that may be recommended to MDE by representatives of the natural gas industry. We look forward to receiving all written comments that are submitted to MDE on the Draft Regulation, and note that we may have additional comments in response to information, particularly data and technical information, that is submitted in these comments to MDE. Some topics on which we expect to submit additional comments are addressed in more detail below.

Comments on Draft Regulation

I. Proposed 0.03 – Leak Detection and Repair Requirements

A. Methodology and Frequency of Leak Surveys

MDE’s current approach in the Draft Regulation closely mirrors the final new source performance standards (NSPS) for the oil and natural gas industry at 40 CFR Part 60, Subpart OOOOa (hereinafter “OOOOa”), which allows flexibility for leak monitoring using either optical gas imaging (OGI) or EPA Method 21 (hereinafter “Method 21”). Draft Regulation Paragraphs .03A(5)(a) & B(3)(a). In addition, affected facilities must submit an initial methane emissions monitoring plan that includes a list of all fugitive emissions components, including difficult-to-monitor and unsafe-to-monitor components. Paragraph .03A(1) & .03B(1). Commenters presently support this approach to allow compliance flexibility between OGI and Method 21, though we believe more frequent leak detection and repair (“LDAR”) monitoring would result in more immediate identification of leaks leading to faster subsequent repairs. By requiring at least monthly leak monitoring surveys, MDE could achieve additional reduction of fugitive emissions and potential product recovery.

Based on the discussion at the 6/28/19 stakeholder meeting, Commenters understand that representatives of the natural gas industry intend to submit comments, with supporting facility-specific information, requesting annual leak detection surveys for all facilities. Leak monitoring is critical to eliminating leaks and reducing methane emissions. Commenters look forward to reviewing any information submitted by industry but firmly believe that surveys must be

performed quarterly at minimum and that monthly surveys would be even more effective at achieving methane reductions.

In addition, Commenters understand that representatives of the natural gas industry may submit comments expressing a preference for conducting leak surveys using OGI rather than Method 21 and stating that the component list should be struck. The commenters' reasoning at the 6/28/19, as we understand it, was that OGI is superior technology and that the component list for the initial methane emissions monitoring plan mirrors the component reporting required for Method 21 in OOOOa, which is incorporated by reference in the Draft Regulation in Paragraph 0.03A(1)(d). At present, Commenters support MDE's proposed approach, which requires a list of all fugitive emissions components to be submitted and for permittees to opt for OGI or Method 21. We believe that the list of fugitive emissions components should not only be included within the initial methane emissions monitoring plan, but should also be updated as a living document any time components are replaced or changed. Commenters also note that incorporated reference to 40 CFR §60.5397 within (Paragraph 0.03A(1)(d)) of the Draft Regulation does not include the specific section that requires the component list for Method 21 compliance (40 CFR §60.5397a(d)) and is thus not a duplicative requirement.

B. Potential Exemptions for "Unsafe to Monitor" Equipment

Commenters are concerned about the fact that equipment that is categorized as "unsafe to monitor" is exempt from the requirement to conduct weekly "audio, visual, and olfactory" inspection of fugitive emission components for leaks or indications of leaks at gas-powered facilities (Paragraph .03A(4)) and monthly audio, visual, and olfactory inspections at electric-powered facilities (Paragraph .03B(2)). The definition of "unsafe to monitor" is broad and imprecise (Paragraph .01B(24)), and neither it nor any other part of the Draft Regulation requires that additional information about this category of equipment be provided. In addition, even if the component is unsafe for monitoring personnel to access, alternatives should be assessed for audio, visual and olfactory inspections. If reasonable alternatives, such as infrared cameras or audio recording, allow for equivalent inspection, monitoring should still be required by the regulation.

We suggest that MDE consider revising the definition of "unsafe to monitor" to be more precise. In addition, in the list of "fugitive emissions components, difficult-to monitor, and unsafe-to-monitor components" that must be developed by facilities (Paragraph 0.03A(1)(a)), MDE should more specifically state that the list must identify the specific components that are unsafe to monitor and provide a brief reason for why each is unsafe to monitor. Commenters also propose that an exemption should be allowed only if there is no feasible alternative monitoring method.

C. Cove Point Climate Action Plan

Based on the structure of Section 0.03 of the Draft Regulation, it appears that the Cove Point Liquefied Natural Gas ("LNG") facility is subject to its own set of LDAR requirements at Paragraph 0.03C and not subject to any of the other, much more specific and clear LDAR requirements set forth in Paragraphs 0.03A or 0.03B. In particular, the section pertaining to the Cove Point facility states: "Cove Point . . . shall comply with the leak detection and repair requirement as specified by the climate Action Plan, which is defined, prepared, and approved

under COMAR 26.09.02.06B-E.” Commenters were not able to obtain this plan from MDE until July 17, 2019, which was not enough time to review the plan for discussion in these comments. We intend to submit additional comments on the sufficiency of the LDAR requirements set forth in the documents that we received.

Regardless of whether those requirements are sufficient, however, we are concerned about the approach of incorporating by reference into the Draft Regulation the requirements from another document rather than setting those requirements forth in the regulation itself. This is of particular concern given that the Cove Point Climate Action Plan appears to be the kind of plan that is periodically updated, which could lead to confusion regarding (1) which version of the plan applies at a given time; and (2) whether modification of the plan, e.g. a change in frequency of leak surveys, constitutes modification of Cove Point facility’s Title V permit such that public notice and comment procedures.

D. New Technologies or Alternative Practices

Paragraph 0.03(E) allows MDE to approve new technologies or alternative practices for leak detection in lieu of OGI or Method 21. Since the LDAR component of the regulations is paramount for decreasing fugitive emissions, as part of any approval of alternative technologies, MDE should be required to make a determination that the proposed alternative is capable of achieving at least the same level of control as OGI and Method 21.

II. Proposed 0.04 (Pneumatic Devices), 0.05 (Reciprocating Compressors), and 0.06 (Vapor Collection System and Vapor Control Devices)

As discussed at the 6/28/2019 stakeholder meeting, MDE reviewed similar regulations for oil and natural gas infrastructure across the nation when developing the technology requirements for the Draft Regulation. Commenters support and appreciate this rigorous review process. More specifically, Commenters support the transition away from gas-driven pneumatic controllers by 2022 as well as the 6 standard cubic feet per hour (scfh) bleed rate limits and the annual requirements for measurement of rod packing and replacement guidelines. If more stringent limits or more advanced technology are finalized before the conclusion of the stakeholder engagement process, Commenters ask that these be considered for adoption into the final draft of this regulation.

Though Commenters generally support the requirements for vapor collection and control by 2021, we are concerned that the Draft Regulation may result in unintended exemptions from inspection requirements. Inspection requirements apply to the vapor collection system (Paragraph 0.06B), which is defined to include all of the equipment leading to route emission vapors to processing, sales gas, fuel gas system, or to a vapor control device, but does not include the control device itself (Paragraph 0.01B(25)). Commenters believe that the vapor control device itself should have applicable inspection and leak detection protocol, which are not clearly included within .06B or .06C of the Draft Regulation.

III. Proposed 0.07A - Record Keeping and Reporting

It is essential to Commenters that this regulation promote transparency and public availability of data, and community members affected by natural gas infrastructure in Maryland

have been emphasizing this point to MDE consistently throughout the stakeholder process. Commenters strongly urge MDE to make as much information as possible easily accessible to the public. Given the short amount of time that we have had to review the Draft Regulation, which included the week of July 4th during which many people are on vacation, Commenters will likely have additional recommendations in the future relating to increasing transparency. In particular, Commenters strongly disagree with MDE's response during the 6/28/19 stakeholder meeting to a question regarding whether MDE might require companies to notify the community when there is a delay in repair of a fugitive emissions component. In its response, MDE staff indicated that, because MDE has opted to separate its regulatory process from its "community involvement process," MDE cannot require additional public notifications via regulation. This is incorrect. Nothing prohibits MDE from requiring that additional information be provided to the public under this regulation. Such revisions to the Draft Regulation should not be considered off the table.

Commenters believe that all emissions reports that are submitted to MDE pursuant to this rule should be made publicly available on MDE's website within a specified time frame, for example, within 48 hours of receipt. Members of Community of Communities (COC), the Maryland network of communities and individuals affected by natural gas infrastructure, have consistently advocated for this requirement throughout the stakeholder process. The Draft Regulation does not reflect that feedback. In accordance with this principle, the quarterly reports on leak monitoring that must be submitted to MDE under Paragraph 0.07A(1)(a) of the Draft Regulation should be made available to the public online. Among other things, in these reports, an owner or operator of a regulated facility must provide the "number and type of fugitive emissions components placed on delay of repair and explanation for each delay of repair." Paragraph 0.07A(1)(a)(x). If MDE were to require public posting of these reports, it appears that this will at least partially address the concerns of the commenter at the 6/28/19 meeting who asked for community notice regarding delayed repairs.

In general, Commenters are concerned when records are required to be maintained on site rather than submitted to MDE where the public could, at the very least, obtain the records via a request under the Maryland Public Information Act. Paragraph 0.07A of the Draft Regulation states that an owner/operator of an affected facility "shall maintain, and make available upon request by the Department, a copy of records necessary to verify compliance with the provisions of the chapter." This should not be the first paragraph in Section 0.07 because it creates some ambiguity regarding whether each subsequent record listed in Section 0.07 must be submitted to MDE or merely maintained on site. MDE should include this requirement at the end of Section 0.07 instead of the beginning. In addition, there are three subsections – Paragraphs 0.07A(1)(b), 0.07A(2), and 0.07A(3)(a)-(d) and (h) - that list specific records that must be maintained on site for at least five years. MDE should explicitly state in each of these sections that these records must also be provided to MDE upon request.

Based on the statements at the 6/28/19 meeting, we understand that MDE is soliciting feedback on the format in which reports are filed. Commenters think reporting format is an important issue because it will affect the ease with which the public can analyze and use the information submitted. Unfortunately, we have not had time to fully research the advantages

and disadvantages of different reporting format options, but we expect to provide feedback on it in a future set of comments.

IV. Proposed 0.07B – Blowdown Events and Reports

Residents living in natural-gas-impacted communities are particularly concerned about blowdown events. For this reason, it is especially important that MDE ensure that adequate information regarding these events is provided to MDE and to the public by the owner/operators of the affected facilities.

With respect to notification of blowdowns, Commenters support the requirements in the Draft Regulation that the owner or operator of an affected facility must post public notification of blowdown events, including blowdowns that happen as a result of non-emergency repairs. In addition to phone- or internet-based notifications to residents, Commenters also urge MDE to require additional communication signaling (e.g., sirens) at locations where vulnerable populations are concentrated such as schools and playgrounds.

Commenters believe that the exemption set forth in Paragraph 0.07B(2)(a) does not make sense and should be struck. This provision allows an owner or operator of an affected facility to avoid providing notification if “safety concerns preclude [it] from providing prior notification of an emergency blowdown.” However, it appears that the Draft Regulation requires notification after the fact (“within one hour”) for emergency blowdowns. Paragraph 0.07B(2). If post-blowdown reporting is required for emergency blowdowns, then any safety concerns preventing prior notifications are irrelevant.

Under paragraph 0.07B(3) of the Draft Regulation, an owner or operator of an affected facility must report on blowdown emissions to MDE annually. Commenters believe that these reports should be provided quarterly and should also be publicly posted on MDE’s website within a specified time frame of their receipt, as described above in Section III. In addition, under the Draft Regulation, only methane emissions must be reported. Paragraph 0.07B(3). Commenters think it is important that these reports also include emissions of other pollutants, including other greenhouse gases (CO₂, nitrous oxide), criteria pollutants, and hazardous air pollutants, that are released during blowdowns.

Based on the comments at the 6/28/19 stakeholder meeting, we understand that representatives of the natural gas industry may prefer to establish a threshold for what constitutes a blowdown so that very small releases may be excluded. Commenters look forward to reviewing the written comments submitted on this issue, including any underlying data, and evaluating any proposed thresholds to ensure that events with potential adverse health effects and events of concern to nearby communities are not excluded.

Also based on the comments made at 6/28/19 stakeholder meeting, we understand that representatives of the natural gas industry are concerned regarding the present requirements at Paragraph 0.07B(2) because not all blowdowns fall into the two categories provided: emergency blowdowns and blowdowns that are planned such that 7 days’ notice can be given ahead of time. Commenters look forward to reviewing written comments submitted by the natural gas industry

on this matter. Regardless of how MDE may categorize blowdowns, it is important that notification be posted ahead of any blowdown or, if prior notice is impossible, after the event.

V. Addressing Environmental Justice Concerns in Siting

Given that natural gas infrastructure is increasing in Maryland, Commenters urge MDE to add a provision to the Draft Regulation to ensure that environmental justice concerns are addressed in the siting of any new facilities under this chapter. An example of a provision that has been used to help address environmental justice concerns in natural gas compressor siting is § 10.1-1307(E) of the Virginia Code, which governs, among other things, permit approvals issued by the Virginia Air Pollution Control Board. Specifically, paragraph E states:

E. The Board in making regulations and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

We thank MDE for its consideration of these comments.

Sincerely,



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