Revisions and Confidentiality Determination for Data Elements under EPA's Greenhouse Gas Reporting Rule

as proposed in

EPA Proposed Reporting Regulatory Expansion under Greenhouse Gas Reporting Program (GHGRP)

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The EPA has asked in proposed rule for comment on the impacts of disclosure of non-emission data. The commenter offers that the EPA does not have the authority under the Clean Air Act Amendments of 1990 to ask for energy use data or how energy resources are obtained. The EPA has authority to ask about emissions and not about energy use.

The EPA staff know, especially in the Office of Air, that asking about energy use is a step into asking about confidential business operations, purchasing and where the manufacturer obtains their fuel. This is a serious breach into collecting information that can allow competitor corporations to "reverse engineer" or for countries that do not share our same national interests to see where many of the nation's manufacturing sectors and energy users obtain their fuel(s). Neither is a smart move.

Recently Congress passed the CHIPS Act and Inflation Reduction Act with strong encouragement from the Biden Administration. Both of these new law sends market signals to many types of industries that will buy many types of fuels and use those fuels as feedstocks to make products. Other companies will balance out whether they should buy mostly electricity through a local power generator or buy natural gas directly from a natural gas producer/supplier. These options need to be retained by these companies without concerns that their energy purchasing options or use is obtainable by parties who would use that information against them. Since the information is not to be obtained to directly assess GHG emissions there is no reason for EPA to obtain the information.

Based upon the passage of CHIPS and IRA there have been approximately 191 new factories or expansions of existing factories to build a wide variety of products. The owners of these new factories select locations based upon many factors: proximity to end users, transportation proximity (surface shipping, rail, barge), distribution centers, related processing facilities for other raw materials, cost of land, local taxes, and cost of energy. The last thing that many of these companies want the energy providers to know is all the details about what volume, price and timing of delivery of their buy energy resources. EPA's attempts to collect this data eliminates the confidentiality of this information. This could be especially difficult for the companies that will be making products with natural gas. According to the DOE there are currently there are more than 6,000 products made from natural gas. These range from everything from pharmaceuticals, movie films, packaging, tires, tool racks, roofing, plastic toys, nail polish, fertilizer, inks, food preservatives, glycerin (including for food sector), artificial limbs (prosthetic devices), cortisone and EV car battery cases.

Asking the companies in the table below is one of the reasons that these new companies projected to be built between 3Q2023 and 2030 that we need will be forced to disclose non-emission related energy supply use. This data is harmful to their economic best interests. And the reporting does nothing to improve GHG emissions.

EPA and Securities and Exchange Commission (SEC)

The SEC has stated it will finalize and issue new reporting rules addressing GHG emissions based upon their proposed rule from 2022. Based upon the proposal of the SEC rule, this reporting will have extensive obligations for corporations based upon Release No. 33-11042. The SEC's final rule is expected to require extensive financial information and disclosures as well as requiring attestation of disclosures by regulated companies.

There is no justification for the EPA to also ask for information on energy use if the SEC requires extensive climate disclosure. Their authority in the public reporting to SEC by publicly traded companies simply makes it more clear that the EPA should not be asking for energy data. Should the SEC retain its proposed Scope 3 disclosure data the publicly traded companies will already be submitting extensive "downstream" emissions data. There is no need for yet another regulatory authority to ask similar information on energy use, energy type, and source.

Note: commenter is not an attorney and is not offering any legal authority opinions about SEC regarding Scope 2 and 3 information collection. Nor is commenter offering opinion about whether Congress authorized SEC to require these disclosures.

POTENTIALLY AFFECTED INDUSTRIAL SECTORS ANTICIPATING NEW FACTORY BUILDING ACROSS 39 STATES AND EXISTING FACTORY EXPANSIONS WITH SENSITIVE ENERGY USE/COST DATA (based upon EPA's proposed rule)

TYPE OF INDUSTRY WHERE INDUSTRY EXPANSIONS ARE INDICATED AND WHERE ENERGY PURCHASE, USE AND ENERGY ALTERNATIVES ARE PROPRIETARY	**WHY DISCLOSURE OF ENERGY INFORMATION MATTERS**
Aluminum Production	Aluminum production is expected to increase for auto manufacturing in 2023-beyond to counter the heavier weight of electric (EV) vehicles. Lighter weight cars will decrease the **decomposition of rate of rubber tires where the rubber tires create more PM emissions** directly from tires aging.
Ammonia Manufacturing	Ammonia manufacturing is expected to increase in 2024-2030 period to make plastics, explosives and pesticides. All of these products are already regulated by the EPA and the energy used by these manufacturers is not needed. EPA's obtaining of ammonia related energy information is especially unwise for the U. S. chemical manufacturing sector. 70% of the U. S. fertilizer industry is made with ammonia. The fertilizer industry is looking into its own international methods to reduce GHGs. There is no reason to require energy related disclosures by this sector.
CO_2 in EOR Recovery Projects	While commenter does not believe that CCS is likely for power plants there are currently approximately 70 permitting applications at US EPA under OAW Water office's UIC Class VI wells and many others possible as a result of the NSPS for EGUs (Clean Power Plan replacement proposed rule). The EOR facilities will already be required to disclose under the VI UIC well

	permits and other CCS/CCUS requirements. Electrification of upstream is rare. Most producers use their own energy supply. Most production will be captured by SEC requirements and there is no need to require energy use information from the energy sector.
Cement Production (NAICS 327310)	Yes- expansions predicted for new cement factories and expansions of existing factories to meet infrastructure build outs from IRA and other market pressures
Electronics manufacturing & semiconductor manufacturing (NAICS 334111, 334413 & related LCD MEMS manufacturing)	Extraordinary expansion of semiconductor manufacturing in 9 states under the CHIPS act already announced. Leading states are OH, AZ, TX, CA, NY and NC where companies would be at economic disadvantage if they had to disclose where they were getting their electricity, natural gas or other energy purchases.
Electrical Equipment Manufacture/Refurbishment (NAICS 33541	Transmissions, switchgear and specialty transformer manufacturing (where there is a 3 year delay in making many types of electrical equipment such as transformers. There is no reason these companies should be required to share with the EPA their energy use.
EGUs reporting through 40 CFR Part 75)	Completely unnecessary to ask EGUs to disclose this data. Most of this data is already submitted by utilities to state PUC commissions, FERC, or DOE under Form 761
Glass Production (NAICS 32711, 327213, 32712)	Glass production expansions expected related to specialty US DOD contracting under NDAA and Appropriations/FAR contracting in 2024 and beyond. Glass production expansions expected related to industrial manufacturing and new home and multi family dwelling construction build outs under IRA and IRS tax credits incentives Glass manufacturing is a heavy energy sector. Glass manufacturers should not be required to disclose what their energy use is, where they obtain their energy resource (often natural gas0 or where they obtain electricity.

Conclusion

EPA proposes to require data disclosure that is not needed for its authorized purpose under Clean Air Act Amendments of 1990 to reduce emissions or under the Inflation Reduction Act of 2022. For a number of manufacturing sectors named above the collection of this information and presumed access to this data (including during PSD permitting process) might subject these industries to more public disclosure and global competition. In some cases, such as in the manufacture of semiconductors, distribution and bulk electric transformers, and where natural gas is the feedstock to make 6,000 products many of our global competitor nations do not have our best interests at heart.

The EPA should withdraw the proposed rule addressing energy purchase, use and source.

Background:

Theresa Pugh Consulting firm with staff holding 37 years' experience representing a wide variety of manufacturers, oil, gas production, electric utilities (natural gas, coal, hydro, renewable generation with natural gas as back up, ferro alloy production, distribution transformers, and semiconductor fab plant manufacturing. Theresa Pugh represented public power or government owned power plants on all the major CAA regulations for 14 years.