Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments

Volume No.:47

Subpart KK—Suppliers of Coal

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Subpart KK—Suppliers of Coal

U. S. Environmental Protection Agency
Office of Atmosphere Programs
Climate Change Division
Washington, D.C.

FOREWORD

This document provides EPA's responses to public comments on EPA's Proposed Mandatory Greenhouse Gas Reporting Rule. EPA published a Notice of Proposed Rulemaking in the Federal Register on April 10, 2009 (74 FR 16448). EPA received comments on this proposed rule via mail, e-mail, facsimile, and at two public hearings held in Washington, DC and Sacramento, California in April 2009. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments letters and transcripts of the public hearings are also available electronically through *http://www.regulations.gov* by searching Docket ID *EPA-HQ-OAR-2008-0508.*

Due to the size and scope of this rulemaking, EPA prepared this document in multiple volumes, with each volume focusing on a different broad subject area of the rule. EPA has made the final decision not to include suppliers of coal in the Mandatory Greenhouse Gas Reporting Rule at this time. Therefore, this volume of the document only provides EPA's responses to public comments received related to whether Suppliers of Coal – Subpart KK, 40 CFR 98, should be included as a source category in the final rule.

Each volume provides the verbatim text of comments extracted from the original letter or public hearing transcript. For each comment, the name and affiliation of the commenter, the document control number (DCN) assigned to the comment letter, and the number of the comment excerpt is provided. In some cases the same comment excerpt was submitted by two or more commenters either by submittal of a form letter prepared by an organization or by the commenter incorporating by reference the comments in another comment letter. Rather than repeat these comment excerpts for each commenter, EPA has listed the comment excerpt only once and provided a list of all the commenters who submitted the same form letter or otherwise incorporated the comments by reference in table(s) at the end of each volume (as appropriate).

EPA's responses to comments are generally provided immediately following each comment excerpt. However, in instances where several commenters raised similar or related issues, EPA has grouped these comments together and provided a single response after the first comment excerpt in the group and referenced this response in the other comment excerpts. In some cases, EPA provided responses to specific comments or groups of similar comments in the preamble to the final rulemaking. Rather than repeating those responses in this document, EPA has referenced the preamble.

While every effort was made to include the relevant comments related to the inclusion of 40 CFR Part 98, Subpart KK—Suppliers of Coal in this volume, some comments inevitably overlap multiple subject areas. For comments that overlapped two or more subject areas, EPA assigned the comment to a single subject category based on an assessment of the principle subject of the comment. In some instances, a partial response was previously provided in the relevant response to comment volume and EPA demurred on that part of the comment relating specifically to Subpart KK. EPA is here including responses to those comments insofar as related to whether suppliers of coal should be included in the rule. For this reason, EPA encourages the public to read the other volumes of this document with subject areas that may be relevant to 40 CFR Part 98, Subpart KK—Suppliers of Coal.

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SUBPART KK—SUPPLIERS OF COAL

1. COMMENTS SUPPORTING GHG REPORTING FOR COAL SUPPLIERS

Commenter Name: Craig Holt Segall
Commenter Affiliation: Sierra Club
Document Control Number: EPA-HQ-OAR-2008-0508-0635
Comment Excerpt Number: 49

Comment: We strongly support EPA's efforts to establish accurate emissions figures from coal mines. We also strongly support EPA's proposal to require coal suppliers – including all active coal mines – to estimate and report CO_2 emissions from the coal produced from mines. We agree that requiring active coal mines to supply this information will provide "valuable information to EPA and stakeholders in the development of climate change policy and programs." For example, since many coal mines in the West remove federally-owned coal with the U.S. government's permission, requiring coal mines to estimate CO_2 emissions from the combustion of mined coal may enable the federal government to better understand and mitigate its contribution to global climate change. EPA's careful description of how CO_2 emissions from coal suppliers is especially helpful given that at least one federal agency recently took the entirely unsupported position that it is "impossible" to quantify such emissions. [footnote: See, U.S. Forest Service, Environmental Assessment, Federal Coal Lease COC-61357 Modification, Tract 4 (Aug. 2008) at 24 ("It is impossible to quantify emissions related to coal that is burned at coal fired power plants with regard to the coal in [a proposed federal coal] lease modification as it will be mixed with other less compliant coals all over the United States to meet air quality standards.") (available at http://www.fs.fed.us/r2/gmug/policy/minerals/bowie/Bowie_Lease_Mod_EA.pdf) (Ex. 44).]

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time, specifically with respect to other information available to EPA for informing the development of future climate policy and programs under the CAA.

Commenter Name: Jeff A. Myrom
Commenter Affiliation: MidAmerican Energy Holdings Company
Document Control Number: EPA-HQ-OAR-2008-0508-0581.1
Comment Excerpt Number: 45

Comment: EPA requests comment on the inclusion of active underground and surface coal mines, coal importers, coal exporters, and waste coal reclaimers, and the exclusion of offsite preparation plants, coke importers and coke manufacturing facilities, and coal rail transporters from reporting requirements under proposed 40 CFR part 98, subpart KK (page 16565). MidAmerican agrees that the inclusions and exclusions as proposed are reasonable.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time.

Commenter Name: E. Levin
Commenter Affiliation: Drexel University
Document Control Number: EPA-HQ-OAR-2008-0508-0256.1
Comment Excerpt Number: 4

Comment: The requirement for essentially every party involved in the coal manufacturing process to report to these new guidelines is needed if the intent of the new rule, the desire to collect data truly representative of the GHG emissions, is to be fulfilled.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time.

Commenter Name: David Rich
Commenter Affiliation: World Resources Institute (WRI)
Document Control Number: EPA-HQ-OAR-2008-0508-0642.1
Comment Excerpt Number: 5

Comment: WRI agrees with EPA's proposal to cover both downstream emitters and upstream emitters (e.g. fuel suppliers, industrial GHG suppliers, mobile source manufacturers), despite this resulting in double reporting. Different policies will require different types of data. Some policies will target upstream sources; other policies will target downstream sources; and certain policies (e.g. a federal cap-and-trade program) will likely target both types of sources. Collecting both upstream and downstream emissions data will ensure that all future policy options are supported by the necessary emissions data. Therefore, WRI agrees with EPA that it is necessary and appropriate to require reporting from suppliers of coal, coal-based liquid fuels, petroleum products, natural gas and NGLs, industrial GHGs, and CO_2; and manufacturers of mobile sources and engines.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. While the Agency is not taking a position on the specific policy and programs to be informed by data collected under the MRR, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble.

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2. COMMENTS OPPOSING GHG REPORTING FOR COAL SUPPLIERS

Commenter Name: Marcelle Shoop
Commenter Affiliation: Rio Tinto Services, Inc.
Document Control Number: EPA-HQ-OAR-2008-0508-0636.1
Comment Excerpt Number: 27

Comment: We have a strong interest in the approach EPA is proposing for requiring coal suppliers to report on downstream emissions. The fact that EPA also will collect essentially the same emissions data from downstream sources raises questions about the rationale and the details of the requirements themselves. While we understand that EPA is attempting to draft a rule in the absence of a specific regulatory framework, we believe it is useful to recognize the trends in the climate change policy proposals being discussed at the federal level. To date many

of these have proposed to place the compliance obligation upstream on the liquid fuel producer given the number of downstream emissions sources (such as transportation). Under those circumstances the need for upstream reporting program is critical to policy implementation. However, in the case of emissions from coal combustion, the policy proposals have focused instead on the emissions sources. There appears to be little rationale for requiring coal suppliers to report on downstream emissions. Although EPA suggested that the appropriations legislation was the basis for its proposal, EPA has not adequately explained how the multiple data sources will benefit the overall program and policy goals.

Response: While the Agency is not taking a position on the specific policy and programs to be informed by data collected under the MRR, please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time.

Commenter Name: Shannon Lucas
Commenter Affiliation: Texas Mining and Reclamation Association (TMRA)
Document Control Number: EPA-HQ-OAR-2008-0508-1028.1
Comment Excerpt Number: 4

Comment: Coal mines associated with mine-mouth power plants should be exempted from the mandatory GHG reporting rule. Although TMRA believes that any policy reasons for mandating reporting from the coal mining industry fail to justify the regulatory burden, these policy reasons become even less significant when dealing with coal mines associated with mine-mouth power plants. Most of Texas's lignite mines supply 100% of the lignite produced coal for a single power plant that has been specifically designed to combust the coal produced at that mine. Most mine-mouth lignite mines sell 100% of the lignite produced to the associated power plants. Texas lignite generally has a high moisture content, which means that the lignite must be combusted near the coal mine in order to be used economically. It is therefore impractical for lignite produced at many coal mines in Texas to be used at any location other than its associated power plant. TMRA recommends that coal mines that are associated with and supply all coal to a single power plant be exempted from the reporting requirements because the mine's sole customer will report GHG emissions data more accurately.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time.

Commenter Name: John W. Fainter
Commenter Affiliation: Associaton of Electric Companies of Texas (AECT)
Document Control Number: EPA-HQ-OAR-2008-0508-0833.1
Comment Excerpt Number: 2

Comment: AECT opposes coal producers having to report GHG emissions that will result when their coal is combusted in electric generating units that are subject to the Acid Rain Program AECT believes EPA has not adequately supported the proposed requirement that a producer of coal would have to report the GHG emissions that will result from the combustion of its coal in an electric generating unit that is subject to the Acid Rain Program. Since all of the GHG emissions that result from the combustion of a coal producer's coal in such an electric generating unit will be monitored and reported by the owner or operator of that unit, requiring the coal producer to report the same GHG emissions that will result from such combustion would result

in double reporting of the GHG emissions. Double reporting would not only be unnecessary, it would also falsely indicate that GI-IG emissions relating to the combustion of coal in electric generating units are twice as high as they truly are. AECT requests that EPA exempt each coal producer from the GHG reporting rules relative to the GHG emissions from the combustion of any of its coal in an electric generating unit that is subject to the Acid Rain Program.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble.

Commenter Name: Benjamin Brandes
Commenter Affiliation: National Mining Association (NMA)
Document Control Number: EPA-HQ-OAR-2008-0508-0466.1
Comment Excerpt Number: 34

Comment: Congress has left to the EPA Administrator the discretion to require upstream reporting in circumstances where appropriate justification exists to impose monitoring and reporting burdens on certain source categories to obtain an identifiable benefit. NMA believes that no such justification exists for proposed source category KK - Suppliers of Coal. NMA also believes that EPA currently has access to data that can provide the estimated CO_2 emission potential of coal sufficient to meet EPA's stated goals. Finally, NMA believes that the costs and burdens placed upon the mining industry to deliver the data mandated by EPA in the proposal far outweigh any identifiable policy benefit, and likely will only lead to confusing and misleading conclusions. For these reasons, NMA requests that EPA remove source category KK from the proposed reporting rule. EPA should create an exemption from the reporting requirements for suppliers of coal to end users that will report emissions of combusted coal under the requirements of this proposal. The overwhelming majority of coal produced in the U.S. is combusted to create electricity by facilities that will, or already do, report actual CO_2 emissions from that process. There is no additional policy or environmental gain to come from requiring suppliers to calculate the imputed CO_2 emissions from coal in which the actual emissions will be accurately and readily monitored and reported by the end user. Some NMA members run mine mouth operations at which virtually 100 percent of the coal produced is supplied to an adjacent power plant that is equipped to monitor emissions from the stack. Requiring supplier reporting in this instance would likely lead to varying data sets that will not accurately inform policy decisions, and will impose burdensome costs that will ultimately be passed on to consumers by way of rate increases. NMA recognizes that non-mine mouth operations potentially deliver coal to a variety of customers, some of which potentially will not be required to report emissions in accordance with this proposal. If coal suppliers are nonetheless required to calculate imputed emissions from at least the portion of their product that isn't put into electric generation, they should be allowed to use weighing and coal quality equipment and procedures that they already have in place with end users through contractual agreements. Because price is determined by coal weight and quality, end users have a strong economic interest in ensuring the accuracy of the data they receive from vendors. Therefore, NMA urges EPA to make clear that reporting entities may rely on company records and commercial records (including coal delivery contracts and invoices) to determine and record consumption.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.

Commenter Name: Benjamin Brandes
Commenter Affiliation: National Mining Association (NMA)
Document Control Number: EPA-HQ-OAR-2008-0508-0466.1
Comment Excerpt Number: 29

Comment: EPA states in the preamble that one of its three goals in the proposed reporting rule is to create requirements consistent with existing programs, and to use existing GHG emission data and reporting methodologies to reduce the burdens on impacted entities. 74 Fed. Reg. 16,456. NMA believes that requiring coal supplier reporting directly contradicts this goal.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time.

Commenter Name: Shawn Glacken
Commenter Affiliation: Luminant
Document Control Number: EPA-HQ-OAR-2008-0508-0549.1
Comment Excerpt Number: 3

Comment: Luminant believes that all of the proposed sampling and analysis requirements are duplicative, burdensome, and unnecessary for surface coal mining like Luminant's which in its entirety supplies fuel only to electric generating units with EPA Acid Rain certified continuous emission monitors for CO_2. Under the proposed rule, analytical instrumentation costs alone would likely exceed $250,000 for Luminant. Additional significant costs of compliance with the proposed rule would include sampling equipment and the sample preparation, analysis, reporting and record keeping. This increase in expense would provide no additional information regarding CO_2 emissions associated with the coal produced in its surface mines since all of the CO_2 from this coal is already reported to EPA when it is burned in Luminant's electric generating units. Luminant therefore recommends that surface coal mines that report their coal production to the EIA and who only supply coal to electric generating units (EGUs) under the EPA Acid Rain Program should be exempt from EPA's requirements under the final Greenhouse Gas Reporting Rule. Luminant's surface coal mining operations currently supply all of its production to nine coal-fired Electric Generating Units (EGUs) that are all equipped with CO_2 monitors under EPA's Acid Rain Program, which has been operational since 1995. These monitors are required to be tested and certified under EPA protocol annually. The testing information and all of the data collected from these monitors are reported to the EPA, as required under the Acid Rain program. Luminant's recommended solution is to exempt the CO_2 reporting under this rule for surface coal mines that send all of their coal production to Acid Rain Program EGUs. As a broader alternative, Luminant would suggest exempting CO_2 reporting for the coal sent from any mine to Acid Rain Program EGUs. Congressional guidance, referenced in Section 1.C. of the proposed rule, provides the Agency flexibility and does not require a one-size-fits-all approach. All of the relevant information needed from surface coal mines could be determined by EPA using the information contained in the currently required. EPA and EIA reports. Any additional information does not justify the added expense of complying with the proposed rule or justify more sampling, analysis, and reporting.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.

Commenter Name: Dennis R. James
Commenter Affiliation: North American Coal Corporation (NAC)
Document Control Number: EPA-HQ-OAR-2008-0508-1082.1
Comment Excerpt Number: 1

Comment: The proposed rule defines (in part) Source Category KK – Suppliers of Coal as any company who produces and supplies coal, in excess of 100,000 tons per year. All of NAC's lignite coal mines produce in excess of 100,000 tons per year and would be required to report "potential" emissions under the rule. In addition, most of our customers are electrical generating stations and will be required to report their CO_2 emissions from combusting our coal. This is upstream and downstream reporting and it will result in double counting the same coal because it is reported by two separate sources. While Congress opened the potential for upstream and downstream (double) reporting, they did not require it. Whether to incorporate double report was left to the discretion of the Administrator. Specifically, in the 2008 Consolidated Appropriations Act, EPA was directed by Congress to: "develop and publish a draft rule not later than 9 months after the date of enactment of this Act, and a final rule not later than]8 months after the date of enactment of this Act, to require mandatory reporting of GHG emissions above appropriate thresholds in all sectors of the economy of the United States." The explanatory statement accompanying the act stated: "The agency is further directed to include in its rule reporting of emission resulting from upstream production and downstream sources, to the extent that the Administrator deems it appropriate." Upstream and downstream reporting is a reasonable approach to quantifying US greenhouse gas emissions in certain circumstances, for instance with respect to emissions related to transportation fuels. Upstream reporting in the case of transportation fuels is reasonable because supplier reporting would capture transportation fuel use by innumerable users (e.g., millions of automobile drivers who do not hit the 100,000 ton threshold) whose use would go unreported if only downstream reporting were required. Downstream reporting in the case of transportation fuels is also reasonable because some end users do exceed the 100,000 ton per year reporting threshold in the aggregate, but do not acquire 100,000 tons from each of their sources of supply. Understanding these different sources could be important to making future policy decisions. Coal, on the other hand, has a very different consumption profile in the United States. Within the US, there are less than 1,500 mines above the threshold limit of 100,000 tons per year. Virtually all of the coal produced and consumed in the U.S. goes to large facilities that will also be required to report GHG under the proposed rule. Thus, in the case of coal, EPA will have a 99 to 100 percent "duplication" overlap of data (by EPA's own assessments). On this subject, the rulemaking's RIA states: "Under this option, the total number of facilities affected is approximately 32% lower than the proposed option, and the private sector costs are approximately 26% lower than the proposed option. The emissions coverage remains largely the same as the proposed option although it is important to note that some process related emissions may not be captured due to the fact that downstream combustion sources would not be covered under this option. A source with process emission plus combustion emissions would only have to report their process emission, thus the exclusion of downstream combustion could result in some sources being under the threshold." This statement appears to mean that EPA recognizes that including coal suppliers as a source category is unnecessary and duplicative. If the only issue is that some process emissions would be under the threshold and

lost, then it should be the threshold that is modified, not the inclusion of a problematic, related source category. NAC believes that double reporting in respect of coal is an inherently flawed system that will cause confusion and minimize the usefulness of the reported data for many reasons, including the following: (1) Many coal mines supply coal to more than one plant or user in a calendar year. Just as many coal users/plants receive coal from more than one mine in a year, often blending coal from multiple mines at any given time to achieve desired combustion characteristics. This situation makes it impossible to identify the potential emissions reported by a supplier with actual emissions reported by a generator. If reported emissions cannot be compared on an as reported facility-by-facility basis, then the collection of double data is an exercise in increased regulatory burden and complication. (2) In the case of coal, there is little to no risk that upstream reporting risks no reporting because downstream reporting only is sufficient. All or nearly all power generation facilities that use coal exceed the reporting threshold. (3) The proposed rule requires suppliers of coal to report the amount of CO_2 the coal would emit, assuming 100 percent combustion. No power plant or other coal user is perfectly efficient. There are several Laws of Thermodynamics that say perfect efficiency is impossible. Therefore, suppliers of coal will be reporting more CO_2 than can actually be emitted, creating an inherent inaccuracy in the data. For these and other reasons, NAC respectfully suggests that the Administrator consider removing the source category of suppliers of coal (Subpart KK) from the rule before it is finalized. If the potential emissions from coal are not reported, the EPA will not lose any CO_2 inventory as the facilities actually generating the CO_2 will be reporting anyway. Removal of the source category will simplify EPA's data handling burdens and will improve accuracy and public confidence in the data. This more accurate, simplified data would then be a better guide to national policy decisions.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble.

Commenter Name: Fredrick Palmer and Dianna Tickner
Commenter Affiliation: Peabody Energy
Document Control Number: EPA-HQ-OAR-2008-0508-0552.1
Comment Excerpt Number: 3

Comment: EPA obviously does not need coal suppliers to report the imputed emissions of their coal when combusted in order for the Agency to determine those combustion emissions. EPA, of course, recognizes that, under current reporting requirements and the reporting requirements that will be imposed by the rule, EPA will have detailed and specific information as to the CO_2 emissions that will result when the coal is combusted by utilities and industrial and manufacturing facilities. As EPA states, "[u]nder the regulations, affected EGUs must submit detailed quarterly and annual CO_2 emission reports, using standardized electronic reporting formats." 74 Fed. Reg. at 16459/1. EPA describes this data as "high quality." Id. at 16459/2. Although EPA does not provide its specific rationale for requiring coal supplier reports of imputed emissions, Peabody assumes that EPA's reason may be that it wishes to identify the specific mines supplying the carbon in the coal being combusted by particular utilities. Peabody surmises that EPA believes that this information would be useful in assessing costs under various CO_2 regulatory scenarios, which assessments could include determining how coal production and deliveries may change under a given set of regulations depending on the carbon content of various coals. If this is indeed EPA's rationale, the Agency, in order to justify coal supplier

reporting, must explain why existing information is not sufficient for these analyses. As explained in the TSD, utilities currently report to the Energy Information Administration ("EIA") their coal purchases by origin mines, setting forth the quantity and quality of the coal, including heating value (BTUs). TSD at 29-36. Thus, EPA already has access to information as to how much coal is being produced at each mine, the utilities to which it is being supplied and in what quantity and quality, including heating value. Although heating value is not exactly the same as carbon content, the U.S. Geological Service ("USGS") in its National Coal Quality Inventory, as the TSD explains, found a strong correlation between heat content and carbon content by coal rank. This information allowed USGS to develop factors converting various heat content levels of coal to carbon content, as set forth in the TSD, Appendix 3. In addition, as EPA is aware, EIA developed CO_2 emission factors for coal by rank and state of origin. See Hong and Slatick, Carbon Dioxide Emission Factors for Coal (1994), available at www.eia.doe.gov/cneaf/coal/quarterly/CO_2_article/CO_2.html. EPA used these factors, as set forth in EIA Table FE4, in the proposed rule to analyze appropriate reporting thresholds for coal suppliers. 74 Fed. Reg. at 16565, Table KK-1. At another point in the preamble, EPA states that it considered but rejected use of the USGS and EIA factors, as well as factors available from the International Panel on Climate Change, because "[e]xisting information on the variability of carbon content for coal ... indicate that default values introduce considerable uncertainty into the emissions calculation. Id. at 16567/1. But EPA fails to explain what the uncertainty is and why it forecloses useful analysis of potential CO_2 regulations. This contrasts with EPA's discussion of its consideration of an option to report indirect emissions from electricity purchases, where EPA appears to endorse the use of calculated factors to estimate emissions and notes their use by other regulators. Id. at 16473/1-2. Moreover, since 93 percent of coal is combusted in EGUs, and since EGUs monitor their CO_2 emissions through continuous emissions monitors and report that information to EPA, the Agency can easily verify that there is only a small variation in CO_2 emissions between units burning coals of the same rank despite a wide variation of coal suppliers/locations. Similarly, leading congressional proponents of GHG legislation understand that emissions factors are appropriate for regulatory purposes. For instance, Section 783(b)(2)(A)(ii)(1) of the recently reported Waxman-Markey American Clean Energy and Security Act of 2009 provides that "[t]he Administrator shall determine the amount of fossil fuel-based electricity delivered at retail by each electricity local distribution company, and shall use appropriate emission factors to calculate carbon dioxide emissions associated with the generation of electricity." (Emphasis added.) In fact, EPA routinely uses the EIA 002 emission factors, as well as other available information about coal, including the utility coal purchase reports to EIA, in very significant regulatory analyses through the Agency's use of the Integrated Planning Model ("IPM"). As EPA is well aware, the IPM is a major tool that the Agency has used to analyze the economic effects of such major rulemakings as the Clean Air Mercury Rule and the Clean Air Interstate Rule, as well as in five analyses of various proposed congressional GHG legislation, including one that EPA just completed in April 2009. See http://www.epa.gov/clinnatechange/econornics/economicanalyses.htnnl. As EPA stated in its just-completed preliminary analysis of the recent Waxman-Markey discussion draft of CO_2 regulation: * EPA uses the Integrated Planning Model (IPM) to analyze the projected impact of environmental policies on the electric power sector in the 48 contiguous states and the District of Columbia. * IPM is a multi-regional, dynamic, deterministic, linear programming model of the U.S. electric power sector. * The model provides forecasts of least-cost capacity expansion, electricity dispatch, and emission control strategies for meeting energy demand and environmental, transmission, dispatch, and reliability constraints. * IPM can be used to evaluate the cost and emissions impact of proposed policies to limit emissions of sulfur dioxide (SO2), nitrogen oxides (NOx), carbon dioxide (002), and mercury (Hg) from the electric power sector. * The IPM was a key analytical tool in developing the Clean Air Interstate Regulation (CAIR) and

the Clean Air Mercury Rule (CAMR). * IPM provides both a broad and detailed analysis of control options for major emissions from the power sector, such as power generation adjustments, pollution control actions, air emissions changes (national, regional/state, and local), major fuel use changes, and economic impacts (costs, wholesale electricity prices, closures, allowance values, etc.)." See EPA Analysis of the Waxman-Markey Discussion Draft, Appendix, at 94, available at http://www.epa.gov/climatechange/econonnics/pdfs/VVM-Analysis.pdf. The IPM uses a variety of publicly-available and reported data about utility coal purchases to establish a 2006 base year, referred to by EPA as the National Electric Energy Data System (NEEDS) 2006. See http://www.epa.gov/airmarkt/ progsregs/epa-ipm/index.html#newbc. This data allows the model to determine, for the base year, where each EGU purchases coal, the coal quality and its delivered price. Using this information and other inputs, EPA can then model the effect a given change in regulatory policy may have on operation of EGUs –which units will close, which units will operate more or less, which units will install pollution control equipment, which units will purchase emission allowances, which units will fuel-switch, etc. Based on reported information on the heating value of coal being supplied to each unit, the model uses the EIA CO_2 factors to determine the CO_2 emissions for such unit for the 2006 base year and for regulatory-change scenarios. EPA's use of the IPM to assess the cost of important regulations has been upheld by judicial decisions reviewing such regulations. See Appalachian Power Co. v. EPA, 249 F.3d 1032, 1052-1053 (D.C. Cir. 2001). At the request of Congress, the EIA also produces analyses of proposed CO_2 legislation, and it also uses the CO_2 emissions factors set forth in Hong and Slatick, Carbon Dioxide Emission Factors for Coal. These factors are also commonly applied elsewhere in industrial studies. It may be true that there is some level of imprecision in the EIA CO_2 factors, but such imprecision does not justify requiring coal suppliers to supply the imputed emissions data proposed to be required here, for a number of reasons. First, the data EPA seeks will itself be imprecise. EPA asks that the data be reported based on an assumption that all the carbon in the coal will be completely oxidized. In the real world, the carbon in coal is not completely oxidized in the coal combustion process. Peabody has not done a calculation as to what percent of carbon in coal is fully oxidized, but if EPA believes that the imprecision in the EIA CO_2 factors is greater than the imprecision introduced by its assumption of 100% oxidation, the Agency must produce a quantified reason for that belief. Second, the IPM uses numerous inputs that are likely far more imprecise than the EIA CO_2 factors. As just one example, the model makes assumptions as to coal and rail prices, even though it does not have access to actual pricing data. Similarly, the uncertainty in the forward natural gas price curves used in the model is much higher than the uncertainty in the relationship between coal heating and carbon content. Third, the carbon content of coal is not the predominate factor in determining the actual CO_2 emissions that coal-fired generation will produce. By far, the dominant factor is the efficiency of the unit. A large part of that efficiency is how well a particular coal burns in a particular boiler for reasons that have nothing to do with carbon content. For instance, a unit designed for bituminous coal will not efficiently burn subbittuminous coal and vice-versa. Some subbittuminous coals burn well in some units designed for subbittuminous coal and some don"t burn as well, depending on a number of quality characteristics of the particular coal. As a result, although information on carbon content may, on some theoretical level, be useful, it will not allow EPA to accurately determine what the CO_2 emissions of a particular coal at a particular unit will be. Fourth, coal from different mines is often blended either at a transloading facility or at a powerplant, making it impossible in these cases to match the CO_2 emissions reported by the generator with the imputed CO_2 emissions reported by the mine operators. Apart from the significant imprecision that this fact introduces into any analyses EPA would conduct using the coal supplier data, considerable confusion will likely result from the mismatch of utility and coal supplier CO_2 emissions data. In sum, not only has EPA not made the case for why it needs the imputed emissions data from coal suppliers, such

a case cannot be made. EPA has relied on the IPM to determine the cost of some of the most significant regulations the Agency has issued, and it has similarly relied on that model to analyze highly complex congressional legislative proposals that would regulate CO_2 emissions far into the future. The IPM model uses the EIA 002 emission factors, and those factors should be sufficient enough for future analysis. If EPA believes otherwise, it must specifically identify why it thinks the IPM and the use of emission factors are no longer sufficient for future analysis. This is particularly the case given EPA's statement that one of its three goals in the reporting rule in general is to "[c]reate reporting requirements that are consistent with existing GHG reporting programs by using existing GHG emission estimation and reporting methodologies and to reduce reporting burden, where feasible." 74 Fed. Reg. at 16456/3. Requiring coal supplier reporting directly contradicts this goal.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time, specifically with respect to other information available to EPA for informing the development of future climate policy and programs under the CAA.

Commenter Name: Terry L. Steinert
Commenter Affiliation: Koch Carbon LLC
Document Control Number: EPA-HQ-OAR-2008-0508-0392.1
Comment Excerpt Number: 1

Comment: EPA has significantly underestimated the regulatory burden that the Proposed Rule would impose on coal exporters. In its Preamble to Subpart KK, EPA explains that it had included coal exporters in the Proposed Rule so that it may balance the total supply of coal into the U.S. economy against the coal that leaves the country. 68 Fed. Reg. at 16564. But as EPA also acknowledges, the amount of coal exported from the United States is quite small, less than 5% or 60 million tons of the 1.16 billion tons of coal produced in the United States each year. Id. and Suppliers of Coal Technical Support Document ("TSD"), EPA-HQ-OAR-2008-0508-037 (using 2007 data). Given that exports represent such a small portion of the U.S. coal supply, EPA has justified including exporters in the detailed reporting regime of Subpart KK on the basis of its understanding that exporters already calculate the quantity and heat value of the coal they export, meaning that Subpart KK would impose only "a minimal additional burden" on them. 68 Fed. Reg. at 16564. But EPA's assumption is unfortunately incorrect. While exporters do currently receive certain information about the quantity and heat value of the coal they export, the data they maintain are not consistent with the much more substantial information specified in the proposed Subpart KK, nor is the Subpart KK information readily available to exporters. For example, Subpart KK requires exporters to report "the total annual quantity in tons of coal exported from the United States by rank and by coal producing company and mine." Id. at 16713 (proposed section 98.376(d)). The Proposed Rule specifies that this quantity is to be determined using the reports exporters are already required to submit to U.S. Customs. Id. at 16712 (proposed section 98.374(d)). But while the U.S. Customs reports do provide information about the quantity of coal in a shipment, they do not, as EPA indicates, correspond with the information exporters would be required to submit under the proposed Subpart KK. First, Customs reports do not include the source company or mine for the coal in any given shipment. Indeed, it would be impractical to do so because a single shipment may be comprised of coal from different sources and it is not at all clear how coal exporters can provide this information due to the commingling of domestic coal prior to export. Second, the quantities reported in U.S. Customs reports are often not derived from NIST-calibrated scales, which is the only method of

measurement specified for the proposed Subpart KK. See Suppliers of Coal TSD at p. 27. Rather, it is far more common for load size to be assessed for both Customs and Census Bureau reports using a vessel survey – the process of determining cargo weight by measuring the draft of a vessel. Shifting to the NIST-calibrated scale method specified in the TSD would necessitate a total revamp of the industry's vessel loading procedures and cause significant additional cost burdens on exported coal.

Response: At this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.

Commenter Name: Benjamin Brandes
Commenter Affiliation: National Mining Association (NMA)
Document Control Number: EPA-HQ-OAR-2008-0508-0466.1
Comment Excerpt Number: 33

Comment: NMA believes that EPA has grossly underestimated the costs and other burdens to which coal suppliers will become subject if this proposal is finalized. EPA identifies that nearly half of the active coal mines in the U.S. produce less than 100,000 short tons of coal in a given year. TSD, Appendix A. EPA proposes that these "small" mines choose to report in accordance with either methodology 1 or 2, or follow the procedures outlined in Methodology 3. The majority of these small mines do not necessarily use ASTM sampling procedures or weigh coal in accordance with NIST Handbook 44, as is proposed in Methodology 3. 74 Fed. Reg. 16,567. In fact, much of the product information from these mines is calculated at the point of delivery, and not, as EPA supposes, at the mine itself. Coal is sampled in various ways based primarily on the mode of transportation utilized to ship it, and is set out in contracts between the supplier and the customer. ASTM procedures utilize conveyor belt loading, but many facilities, particularly those that ship coal by barge or truck, use front end loading machines and never utilize a conveyor system. The cost to these mines to come into compliance with ASTM procedures would be significant. EPA does not contemplate for the capital expenditures associated with purchasing samplers and conveyor belt scales consistent with ASTM. Additionally, many mines would be required to add laboratory technicians, mechanics and other personnel to comply with new regulations. Although large producers would be able to absorb these costs more easily, hundreds of small producers would be significantly impacted. In order to obtain more precise information regarding the capital costs small coal mining operations will absorb if the proposed reporting rule is finalized, NMA hired John K. Alderman, President of Advanced Coal Technology (ACT), Inc., to prepare a cost estimate. NMA has attached Mr. Alderman's analysis as Appendix A.[SEE APPENDIX A OF DCN # EPA-HQ-OAR-2008-0508-0466.1] Based on his professional experience, Mr. Alderman estimated that the majority of mining operations producing less than 500,000 tons of coal per year do not currently maintain the equipment and personnel needed to comply with ASTM standards and NIST code. According to the MSHA database to which EPA refers in the proposed reporting rule, 1,079 of the 1,365 of the operating mines in 2007 produced less than 500,000 tons of coal. 74 Fed. Reg. 16,564. Mr. Alderman further estimated that the capital costs that unequipped operations would be required to absorb in order to comply with EPA's proposed procedures would range from $489,000 to $555,000 in initial expenditure, with an estimated total annual operating cost of $246,000. This information is in stark contrast to EPA's estimates in its Regulatory Impact Analysis that labor costs to mines will be $6,800 per entity in the first year and $2,500 in subsequent years. EPA further estimates that the annualized capital expenditures for mines will be less than $5 per year. NMA believes

that EPA has grossly underestimated all costs to mines associated with this proposal, particularly with respect to small operations that are presently unequipped to meet EPA's proposed reporting requirements. These are not negligible costs for mining operations producing smaller amounts of coal. The vast majority of these small mines are stand alone, independent operations that will not benefit from the larger corporate structure of some companies, nor will they benefit from location within a cluster of other operations that could potentially pool resources. Undertaking these capital expenditures will cut into increasingly thin profit margins and will likely get passed on to end users and the public by way of rate increases. NMA believes the ACT report demonstrates that EPA has drastically underestimated the costs of compliance for small mining operations.

Response: Please see Section III.D of the preamble for EPA's rationale for its final decision not to require reporting from coal suppliers at this time. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time. The general comment regarding small business impacts was addressed in the 2009 final rule and is not being revisited here.

Commenter Name: John W. Dwyer
Commenter Affiliation: Lignite Energy Council (LEC)
Document Control Number: EPA-HQ-OAR-2008-0508-0422.1
Comment Excerpt Number: 1

Comment: LEC is commenting specifically on a fundamental flaw in the proposed rule ... the requirement that coal mines and coal combustion facilities will be required to report greenhouse gas (GHG) emissions for the same coal product. This "double reporting" from upstream and downstream sources will add unnecessary operation costs to the price of lignite coal sold to our customers. In turn, these increased costs will ultimately be paid by consumers of electricity and the various products produced by the coal gasification facility. The concept of upstream reporting from suppliers originated in FY 2008 Appropriations Act where Congress directed EPA to: "...publish a ... final rule ... to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States." Congress, however, did not mandate double reporting, but rather left it to the EPA Administrator's discretion. The EPA states in the preamble that it is requiring upstream reporting from suppliers of industrial gases and fossil fuels to avoid requiring reporting from "hundreds of thousands" of emission sources. EPA, however, does not distinguish transportation fuel from mines that supply lignite for electricity generation or coal gasification activities. Lignite coal is distinguishable from other fossil fuels because nearly all of the lignite produced in North Dakota is combusted by large facilities generating electricity or in the coal gasification process. More specifically, approximately 79 percent of North Dakota lignite coal is used to generate electricity, 13.5 percent is used to generate synthetic natural gas, and 7.5 percent is used to produce fertilizer products (anhydrous ammonia & ammonium sulfate). Less than 1% is used as a home heating fuel, as fertilizer and for oil well drilling mud. With over 99 percent of lignite being used by regulated combustion facilities, virtually all emissions created by the combustion of lignite will be accurately monitored and reported downstream at the point of combustion. The LEC does not believe that EPA's justification for requiring upstream reporting from transportation fuel suppliers adequately applies to suppliers of coal. In order to comply with the Congressional intent of the explanatory statement accompanying the appropriations act referenced above, EPA should provide source specific justification for requiring upstream reporting, and eliminate such requirements where no justification can be reasonably made. In the case of lignite coal, the

proposed rule's upstream and downstream reporting requirements will result in unnecessary double counting of the same CO_2 emissions reported by two separate sources, and unnecessary monitoring costs to collect data covering minuscule secondary uses of the product. Double reporting is inherently flawed for another reason. The proposed rule requires suppliers of lignite to report the amount of CO_2 the lignite would emit, assuming 100 percent combustion. No power plant or other lignite user is perfectly efficient. As such, North Dakota lignite mining companies will be reporting more GHG emissions than can actually be emitted, creating an inherent inaccuracy in the data. For these reasons, the LEC urges the EPA to eliminate Subpart KK from the rule. If the potential emissions from lignite are not reported, the EPA will not lose any GHG inventory since lignite combustion facilities will report actual CO_2 emissions. Furthermore, removal of the source category will simplify EPA's data handling burdens and will improve accuracy and public confidence in the data.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.

Commenter Name: John R. Evans
Commenter Affiliation: LyondellBasell Industries
Document Control Number: EPA-HQ-OAR-2008-0508-0718.1
Comment Excerpt Number: 8

Comment: LyondellBasell believes that the proposed rule would result in significant double counting of emissions if implemented as currently written. This would in turn lead to an inaccurate and misleading inventory. Several sections of the proposed Mandatory Reporting Rule overlap and require reporting of potential or phantom emissions which are not actually, but rather, could be emitted. These sections include: subpart KK (supplier of coal); subpart LL (supplier of coal based liquid fuels); subpart MM (suppliers of petroleum products); subpart OO (suppliers of industrial greenhouse gases); and subpart PP (suppliers of carbon dioxide). As currently crafted, the Mandatory Reporting Rule requires that suppliers of coal report CO_2 emissions from what might be the complete combustion or oxidation of all coal supplied. These emissions would overlap completely with emissions reported by all facilities that actually burn coal as fuel. The clearest example of this is the electric generation facilities (covered in subpart D). This would result in a double counting of greenhouse gas emissions. Also, phantom emissions from coal not burned for fuel, but used for other purposes, would also be erroneously reported. Similarly, suppliers of coal based liquid fuels are also required to report CO_2 emissions as if their products were completely combusted or otherwise oxidized. This would again result in the double counting of emissions, first by the supplier of coal based liquid fuels, and again by the entity that actually burned the coal-based liquid fuel. Similar issues arise when quantifying emissions from suppliers of petroleum products and natural gas and natural gas liquids. As required by the proposed mandatory reporting rule, suppliers of these products must report CO_2 emissions as if the products were completely combusted or oxidized, whether they actually are or not. Furthermore, the proposed rule requires that all products, both fuel and recognized feedstock volumes be used to calculate potential CO_2 emissions. There are several problems with this approach. First, the reporting of phantom CO_2 emissions from suppliers of petroleum, natural gas and natural gas liquid fuels will be double counted with the direct emissions reported from those sources who actually combust these products as fuel. Second, reporting phantom emissions from

natural gas, natural gas liquids, and petroleum products used as feed stocks assumes the carbon in these product streams will be emitted as greenhouse gasses and does not recognize the fact that they will, in fact, be sequestered in products. The following example illustrates the double (and triple) counting issues associated with the proposed Mandatory Reporting Rule: According to §98.402(a), "Natural gas processing plants must report the CO_2 emissions that would result from the complete combustion or oxidation of the annual quantity of propane, butane, ethane, isobutene and bulk NGLs sold or delivered for use off site." In this particular case, NGL's (raw and fractionated) are imported into a feedstock purification unit in an olefins plant. The purification unit processes the NGL's. Some compounds are sent to the olefins plant as feedstock and some are sold to third parties as either fuel or feedstock depending on current economics. Normally, feedstock is the economically preferred option. If the third party sales go into the fuel market, the buyer is usually a large fuel supplier or user. Multiple counting of CO_2 occurs in this example as outlined below. The CO_2 from the imported NGL's would be reported by the supplier even though none of this NGL is directly combusted. The CO_2 from processed NGL's and sold as feedstock would also be reported, again, none of the NGL is directly combusted. The CO_2 from the processed NGL's sold as fuel would likely be reported again if sold to another supplier before reaching a customer who would legitimately report CO_2 emissions from the combustion of the fuel. It is clear from this example that the proposed mandatory reporting rule would result in the multiple counting of GHG emissions, producing an inflated and inaccurate inventory. In the proposed rule, EPA also requires that suppliers of industrial GHG and carbon dioxide report emissions as if the total CO_2 production volume were emitted into the atmosphere. Once again, this methodology does not recognize the fact that a majority of the CO_2 produced in an ethylene oxide plant is sold as a product, sequestered into products, and as a result is not emitted into the atmosphere. Due to the identified multiple counting issues associated with requesting emissions data from sources listed in subparts KK through PP, LyondellBasell proposes that only direct emissions be requested and reported in the Mandatory Reporting Rule. Requesting only direct emissions of GHG will result in a more accurate and credible inventory, and will also reduce the administrative and reporting burden on the regulated community.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.

Commenter Name: Shannon Lucas
Commenter Affiliation: Texas Mining and Reclamation Association (TMRA)
Document Control Number: EPA-HQ-OAR-2008-0508-1028.1
Comment Excerpt Number: 3

Comment: Suppliers of coal should not be included as a source category because any reported data would be inherently inaccurate and duplicative of reliable data currently reported by the electricity generation industry. The proposed rulemaking requires coal mines to report the amount of C02 that would be emitted from the combustion of the coal, assuming 100% combustion of the coal. A 100% combustion rate of coal is impossible to achieve at any power plant or other consumer of coal. The data produced by this reporting rule would be inherently inaccurate; TMRA is concerned that the bad data set produced could later be inappropriately used against the coal industry and would run counter 10 the overall goals of this effort. Further, by EPA's own estimates, 99% to 100% of the emissions that would be reported under this rule

would be reported by the users of the coal. TMRA believes that any policy justifications for requiring double reporting from the coal mining industry are not supported in light of (1) the regulatory burden placed on this industry and (2) the fact that actual GHG emissions can only be determined by examining the efficiency of the combusting unit. TMRA recommends that the Administrator·consider removing the source category of suppliers of coal (Subpart KK) from the proposed rule.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble.

Commenter Name: See Table 4
Commenter Affiliation: NPRA
Document Control Number: EPA-HQ-OAR-2008-0508-0433.2
Comment Excerpt Number: 16

Comment: Due to the identified multiple counting issues associated with requesting emissions data from sources listed in subparts KK through PP, NPRA proposes that only direct emissions be requested and reported in the Mandatory Reporting Rule. Requesting only direct emissions of greenhouse gases will result in a more accurate and credible inventory and will also reduce the administrative and reporting burden on the regulated community. In the rule preamble, EPA recognizes the potential of emissions double-counting by stating, "There is inherent double-counting of emissions in a program that includes both upstream and downstream sources." (p. 16466) NPRA believes that the proposed rule would result in significant double-counting of emissions. This would in turn lead to an inaccurate and misleading inventory. Several sections of the proposed Mandatory Reporting Rule overlap and require reporting of potential or presumed emissions which are not actually, but rather could potentially, be emitted. These sections are listed below. 1) Subpart KK – Supplier of Coal 2) Subpart LL – Supplier of Coal Based Liquid Fuels 3) Subpart MM – Suppliers of Petroleum Products 4) Subpart NN – Suppliers of Natural Gas and NGLs (natural gas liquids) 5) Subpart OO – Suppliers of Industrial Greenhouse Gases 6) Subpart PP – Suppliers of Carbon Dioxide As currently crafted, the Mandatory Reporting Rule requires that suppliers of coal report the CO_2 emissions from what might be the complete combustion or oxidation of all coal supplied. These emissions would overlap completely with emissions reported by all facilities that actually burn coal as fuel. The clearest example of this is the electric generation facilities (covered in subpart D). This would result in a double-counting of greenhouse gas emissions. Also, presumed emissions from coal not burned for fuel, but used for other purposes, would also be erroneously reported. Similarly, suppliers of coal-based liquid fuels are also required to report CO_2 emissions as if their product were completely combusted or otherwise oxidized. This would again result in the double-counting of emissions, first by the supplier of coal based liquid fuels, and again by the entity that actually burned the coal-based liquid fuel. Similar issues arise when counting emissions from suppliers of petroleum products, natural gas and natural gas liquids. As required by the proposed mandatory reporting rule, suppliers of these products must report CO_2 emissions as if the products were completely combusted or oxidized, whether they actually are or not. Furthermore, the proposed rule requires that all products, both fuel and recognized feedstock volumes, be used to calculate potential CO_2 emissions. There are several problems with this approach. First, the reporting of presumed CO_2 emissions from suppliers of petroleum, natural gas and natural gas liquid fuels will be double-counted with the direct emissions reported from those sources that actually combust the fuel.

Second, reporting presumed emissions from natural gas, natural gas liquids and petroleum products used as feedstocks assumes the carbon in these product streams will be emitted as greenhouse gases and does not recognize the fact that they will, in fact, be sequestered into products. The following example illustrates the double- (and triple-) counting issues associated with the proposed Mandatory Reporting Rule: According to §98.402(a), "Natural gas processing plants must report the CO_2 emissions that would result from the complete combustion or oxidation of the annual quantity of propane, butane, ethane, isobutene and bulk NGLs sold or delivered for use off site." In this particular case, NGL's (raw and fractionated) are routed into a feedstock purification unit in an olefins plant. The purification unit processes the NGL's. Some compounds are sent to the olefins plant as feedstock and some are sold to third parties as either fuel or feedstock depending on current economics. Normally, feedstock is the economically preferred option. If the third party sales go into the fuel market, the buyer is usually a large fuel supplier or user. Multiple counting of CO_2 occurs in this example as outlined below. The CO_2 from the routed NGL's would be reported by the supplier even though none of this NGL is directly combusted. The CO_2 from processed NGL's sold as feedstock would also be reported; again, none of the NGL is directly combusted. The CO_2 from the processed NGL's sold as fuel would likely be reported again if sold to another supplier before reaching a customer who would legitimately report CO_2 emissions from the combustion of the fuel. It is clear from this example that the proposed mandatory reporting rule would result in the multiple counting of greenhouse gas emissions, producing an inflated and inaccurate inventory.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble.

Commenter Name: Shawne C. McGibbon
Commenter Affiliation: Small Business Administration (SBA)
Document Control Number: EPA-HQ-OAR-2008-0508-0979.1
Comment Excerpt Number: 3

Comment: While most small entities will not be subject to the GHG reporting rule on the basis of the reporting threshold, thousands of small entities will still be covered. These entities include small businesses (e.g., small pulp and paper facilities, small coal mining operations). [footnote: The great majority of the coal mines in the United States are operated by small businesses; 48% of U.S. mines produce 100,000 tons of coal or less per year. The National Mining Association has informed Advocacy that it expects GHG reporting requirements to add $7.00 per ton to the cost of small mining operations (or as much as $700,000 per year).] and small communities (e.g., municipal utilities). Both "upstream" GHG sources such as small coal mining operations and "downstream" GHG sources such as small paper mills would have to measure and report their emissions. Because the small coal operation has to report on estimated emissions from the coal it produces while the paper mill would report on emissions from boilers actually burning the coal, there will be double counting of the GHG emissions. Virtually all of the GHG emissions from coal should be accurately captured by downstream facilities when the coal is combusted. Therefore, EPA should clarify that coal mining operations, and possibly other small upstream GHG sources, should not have to report GHG emissions estimates because it is overwhelmingly likely to lead to double-counting. EPA should also exclude the smallest coal mines and other upstream sources that contribute insignificantly to coal, petroleum, natural gas, and other energy source production in the U.S. Alternatively, EPA should allow such upstream sources to use

simplified reporting methods designed to exclude GHG emissions that are counted by downstream sources during combustion.

Response: The general comments regarding so-called double counting emissions and small business impacts were addressed in the 2009 final rule and are not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.

Commenter Name: Fredrick Palmer and Dianna Tickner
Commenter Affiliation: Peabody Energy
Document Control Number: EPA-HQ-OAR-2008-0508-0552.1
Comment Excerpt Number: 2

Comment: EPA's generic rationale for upstream reporting is that "[i]n many cases, the fossil fuels and industrial GHGs supplied by producers and importers are used and ultimately emitted by a large number of small sources, particularly in the commercial and residential sectors (e.g., HFCs emitted from home AC units or GHG emissions from individual motor vehicles). To cover these direct emissions would require reporting by hundreds or thousands of small facilities." The Agency says that to avoid this onerous impact, the rule requires reporting by the far more limited number of "the suppliers of industrial gases and the suppliers of fossil fuels." Id. at 16466/1. Although this generic rationale for upstream reporting makes sense in the context of transportation fuel suppliers and chemical suppliers, it does not logically apply to coal suppliers. As EPA recognizes, there are more than 1300 coal suppliers who will be required to report under the rule, and many of these are small businesses, and some are very small indeed. See TSD, Appendix 1. Moreover, unlike the case in the transportation industry, there is obviously nothing impracticable about requiring those who actually combust the coal to report their CO_2 emissions. Ninety-three percent of the coal produced in this country is combusted by electric utilities, TSD at 6, Ex. 2, who already report their CO_2 emissions to EPA and who will continue to be required to do so under the proposed rule. Almost all of the balance of coal production is sold to industrial and manufacturing companies, id., which will also be required to report their CO_2 emissions under the proposed rule. Additionally, utilities report their coal purchases to the Energy Information Administration, including information on the origin mine, the tonnages purchased and the heat content. Id. at 29-36. Similarly, although EPA recognizes the obvious and almost complete double-counting of CO_2 emissions that the rule would produce when applied to coal suppliers, its justification for this double-counting applies to transportation fuel suppliers and not to coal suppliers. EPA states that "[p]olicies such as low-carbon fuel standards can only be applied upstream." Id. at 16466/2. Low-carbon fuel standards, however, apply to transportation fuel, not coal. The only other rationale that EPA supplies for upstream reporting of imputed emissions – in a half paragraph discussing EPA's legal authority –leaves coal suppliers to guess why and how such reporting is justified, why the availability of data from existing sources is not sufficient, and even whether EPA is referring to coal suppliers. EPA refers to the possible usefulness of imputed emissions data in establishing New Source Review Standards or Best Available Control Technology standards "for some combustion sources," but doesn't say whether this includes coal combustion sources and, if so, how and why the data would be useful and not duplicative of existing data. Similarly, EPA states that reporting of imputed emissions would be useful in developing non-regulatory approaches to controlling CO_2 emissions, but again the Agency does not say whether it is referring here to controlling CO_2 emissions from burning coal and, if so, how and why the data would be useful. Id. at 16455. In sum, EPA's

failure to define the factors it relies on to apply its discretion to determine whether upstream coal supplier reporting is "appropriate" and reasonable, and its failure to provide a rationale for requiring such reporting specifically by coal suppliers, renders the proposal legally defective. Peabody urges EPA to further consider whether it truly needs the data it seeks to mandate from coal suppliers and, if so, to explain its reasoning. The term "appropriate" as used in the joint accompanying statement should be interpreted to require a balancing of benefits and costs. In the context here, EPA must balance the need by the Agency for the data required to be reported in the proposed rule with the costs to coal suppliers of acquiring the data, reporting it, and otherwise complying with the rule. Determining whether it is reasonable to apply Section 114(a) to require upstream coal supplier reporting should similarly turn on a balancing of these benefit and cost factors. Peabody believes that the balance of these factors tips strongly against requiring coal supplier reporting.

Response: The general comment regarding so-called double counting emissions and small business impacts were addressed in the 2009 final rule and are not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.

Commenter Name: Kathy G. Beckett
Commenter Affiliation: West Virginia Chamber of Commerce
Document Control Number: EPA-HQ-OAR-2008-0508-0956.1
Comment Excerpt Number: 24

Comment: The West Virginia Chamber is very concerned about the impact this rule could have upon coal production for the state. Issues have been raised by the coal industry concerning double reporting of the CO_2 emissions produced by the combustion of coal and the upstream reporting by coal suppliers of hypothetical GHG emissions. Nearly all of the coal produced in the U.S., will be combusted by large facilities, and therefore nearly all emissions from the entire product will be accurately monitored and reported downstream at the point of combustion. The Chamber supports the position that requiring mandatory reporting of estimated CO_2 emissions from upstream coal suppliers is inappropriate.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble.

Commenter Name: Robert E. Murray
Commenter Affiliation: Murray Energy Corporation
Document Control Number: EPA-HQ-OAR-2008-0508-1577
Comment Excerpt Number: 14

Comment: Coal is unique in this Rule in that both mines and combustors of coal must report their GHG emissions, leading to significant and unnecessary double reporting. This poses a significant problem. First, it assumes that all coal mined is burned. This is not the case. The National Mining Association estimates that a little over ninety-three percent (93%) of coal is combusted for electricity generation. EPA incorrectly assumes that one hundred percent (100%)

is used by downstream users in this fashion. The very nature of combusting coal for electricity generating purposes varies widely in efficiency from plant to plant. Downstream entities will have very different numbers from upstream entities such as Murray Energy. When the numbers do not match up, this will result in unnecessary investigations and legal fees on behalf of covered entities and the American taxpayer, and provides little-to-no benefit to the public. This rule also requires Murray Energy to track where our mined coal is being used. This is practically impossible. We have contracts with a number of power-generating entities who operate numerous power plants. When they take delivery of our coal, they alone determine which of their facilities will ultimately receive and later use our coal. After the point of delivery, utilities will often ship the coal to a different facility than we anticipated. These power generators are not supplied by us exclusively, so it will be even more difficult for upstream and downstream numbers to correspond. The utilities alone are in the only position to know which coal they utilize at which facility, which is the principle determination of the CO_2e. Then there is the inherent problem of double reporting: Having two sets of numbers will only confuse and misinform the general public, businesses and policymakers on the amount of GHGs in our economy. As a mining company, we cannot ensure that our coal is being combusted for electricity or industrial purposes, so our upstream and their downstream numbers will not equate, and those looking at data will assume that they are not double counted. EPA should drop this double-counting and focus entirely at the point of GHG emission for coal combustion.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble.

Commenter Name: Benjamin Brandes
Commenter Affiliation: National Mining Association (NMA)
Document Control Number: EPA-HQ-OAR-2008-0508-0466.1
Comment Excerpt Number: 25

Comment: CO_2 emissions produced by the combustion of coal in electric generating units will be reported to EPA in accordance with other provisions of this proposal. Additionally, most remaining users of coal will similarly report under the rule. Therefore, virtually all of the actual GHG emissions associated with the U.S. coal production will be accurately monitored and reported at the point of combustion. Aside from the apparent redundancy of requiring upstream reporting by coal suppliers of hypothetical GHG emissions from combustion, the usefulness of collecting and providing this information is diluted for several reasons. First, the proposed rule assumes 100 percent combustion by downstream consumers. Because no electric generating facility is 100 percent efficient, an inherent inaccuracy in the data will be created wherein the estimated emissions from the coal product will exceed the actual emissions at the point of combustion. The type of combustion unit(s) and method of operation at a particular generating facility will have a profound effect upon the nature and efficiency of combustion. Second, because virtually every electric generating facility will produce GHG emissions in excess of the proposed threshold, all of the actual emissions from coal supplied for that purpose will be captured by downstream reporting. Third, coal mining companies often supply coal to multiple customers, and electric generating facilities often receive coal from a variety of vendors. Coal from one supplier is often combined with coal from another supplier. This scenario makes it impossible to correlate the estimated emissions from the upstream coal supply with the actual emissions of that coal downstream at the point of combustion. The only rationale EPA provides

for requiring upstream reporting seems to apply specifically to transportation fuel and industrial GHG suppliers. Certainly, upstream production reporting might prove useful in certain sectors to ensure that the majority of GHG emissions are accurately accounted for in the inventory. Requiring upstream reporting of imputed emissions from gasoline and other transportation fuels by suppliers, for instance, may be appropriate because those fuels are combusted in large measure by sources (such as automobiles) that are not subject to downstream reporting requirements. EPA identifies this very scenario in the preamble. 74 Fed. Reg. 16,466. EPA states in the preamble that it is requiring upstream reporting from suppliers of industrial gases and fossil fuels to avoid requiring reporting from "hundreds or thousands" of emission sources. EPA does not distinguish, however, between transportation fuel and entities that supply coal for electric generation and other purposes covered by the proposal. Coal is distinguishable from other fossil fuels. Nearly all of the coal produced in the U.S. will be combusted by large facilities to generate electricity, and therefore nearly all emissions from the entire product will be accurately monitored and reported downstream at the point of combustion. NMA believes that requiring coal producers to estimate the GHG emissions of their product downstream, while simultaneously requiring electric generating facilities to report the actual emissions at the point of combustion, will unavoidably result in unnecessary and superfluous double counting. NMA does not believe that EPA's justification for requiring upstream reporting from transportation fuel suppliers applies to suppliers of coal. In order to comply with the Congressional intent of the explanatory statement accompanying the appropriations act referenced above, EPA should provide source specific justification for requiring upstream reporting, and eliminate such requirements where no justification can be reasonably made. For these reasons, NMA believes that the Administrator should determine that requiring mandatory reporting of estimated CO_2 emissions from upstream coal suppliers is inappropriate. Requiring upstream reporting for coal suppliers will be burdensome on NMA members, and will produce confusing and non-representative data, given that accurate reporting of actual emissions can be easily contributed by electric generating facilities and other sources covered under this proposal.

Response: The general comment regarding so-called double counting emissions was addressed in the 2009 final rule and is not being revisited here. Nonetheless, at this time, EPA's final decision is to not include coal suppliers in the final rule, the rationale for which can be found in Section III.D of the preamble. Note that cost and burden are not reasons for EPA's decision to exclude subpart KK from the MRR at this time.