



The Fertilizer Institute

Nourish, Replenish, Grow

CLIMECo

The Carbon Operations Company

November 10, 2009

Ms. Nancy Kong
Policy Associate
Climate Action Reserve
523 W. Sixth Street, Suite 428
Los Angeles, CA 90014

Re: Draft Nitric Acid Protocol

Dear Nancy,

Bill Herz from The Fertilizer Institute (TFI) and I want to reiterate how impressed we have been with the Climate Action Reserve (CAR) team in the development of the Nitric Acid Protocol. The process has been very interactive and CAR has really listened to the issues raised by the Workshop Committee. We applaud you and the team and look forward to the successful implementation of the Protocol.

We would like to reiterate a few constructive comments in an effort to further improve upon Version 1 of the protocol, many of which we have already discussed, a few may have not.

Comment 1: Maximum Production Rate Limitation

As we discussed during the Workshop, the economics in the United States do not support the over production of nitric acid solely for the purpose of generating N₂O offsets. As such, we suggest that CAR remove this limitation so that the protocol encourages N₂O abatement for new and or expanded facilities. We do however understand CAR's concerns and desire to maintain the highest standards. As an alternative, in the event a facility is required to increase production beyond historical values, perhaps CAR could consider requesting documentation that justifies the production increase, such as customer demands, market shortages, etc. This may help alleviate the overarching concern of "gaming the system" through the overproduction of nitric acid.

On a similar note, we fully support the removal of the nameplate capacity as this is not reflective of maximum production. As an alternative, CAR proposed that a facility establish the maximum nitric acid production capacity based on the average nitric acid production rate during the previous five campaigns. This approach will result in an underestimation of production rates due to recent market turndowns and the use of the average production rate rather than maximum. We suggest that CAR use the maximum production rate during the last 5 campaigns, and preferable extend the look-back to a longer period of time, perhaps 5-years.

Comment 2: Allowance of Tertiary Application Downstream of an NSCR

As we discussed, we believe that a NAP utilizing NSCR should be eligible to obtain carbon offsets by the use of a tertiary installation downstream of the NSCR. This would in essence further abate N₂O. A facility would simply apply the tertiary section of the protocol to this application.

Comment 3: December 2009 Construction Date

As an overarching theme, we do not believe that the construction date cut-off accomplishes the desired impact of the protocol, which is to create an incentive to reduce N₂O. We believe that new facilities should also have an equal incentive to capitalize on the CAR nitric acid protocol.

With an understanding of CAR's concern about new facilities, at a minimum we would like to see some flexibility built into this construction cut-off definition. For instance, a facility that has designed or made a commitment to construct a new plant prior to the issuance of the Nitric Acid Protocol release date should be eligible regardless if construction is completed after the December 2009 date.

Comment 4: 24 Month Idle Time Limitation

The 24-month idle time limitation is prohibitive and will negatively impact producers from having an incentive to control N₂O. For instance, there are producers that are bringing older plants (idle for more than 24 months) back on-line to meet customer demands. These facilities have made the capital approvals and have begun this process. Similar to Comment 3, we believe that these facilities should also be eligible to abate N₂O and obtain offsets, as they clearly demonstrated their commitment to resurrect the facilities prior to their awareness of the CAR Nitric Acid Protocol.

Comment 5: Getter Gauze

We believe this was adequately covered in previous conversations. As stated, not all facilities use getter gauzes due to differential pressure increase and the negative impact on nitric acid production. Similarly, some facilities simply don't require getter gauzes as they use non-precious metal primary gauzes (cobalt). We believe that this requirement should be removed.

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Comment 6: 40 CFR Part 60 vs. 40 CFR Part 75

The protocol references both 40 CFR Part 60 and 40 CFR Part 75. Although we believe that certain sections of Part 75 bring value, to the extent practical, facilities should primarily apply Part 60. This is consistent to what is already being applied to a NAP's NOx CEMs.. We can provide a detailed summary of Part 75 vs. Part 60 at your request.

Please let us know if you have any questions or comments or if we can be of any additional assistance.

Sincerely:

The Fertilizer Institute

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Cc: Kathryn Bickel – CAR
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