



March 25, 2024

The Honorable Michael Regan
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Submitted electronically via www.regulations.gov

CORRECTED letter

Re: Waste Emissions Charge for Petroleum and Natural Gas Systems: Proposed Rule

Dear Administrator Regan,

It is with considerable concern that I provide comments to the Waste Emissions Charge (WEC) for Petroleum and Natural Gas Systems proposed rule. While I certainly understand the need for the promulgation of rules required by the Inflation Reduction Act, I am certain that Congress never intended such rules to be skewed against many of the independent small producers who provide much of our nation's oil and gas. I also understand the Inflation Reduction Act addressed methane and other emissions, but states like Wyoming have been actively addressing these issues for many years. We now have various agencies of the federal government "helping" us manage our oil and gas industries. In reality that "help" comes down to the federal agencies promulgating a convoluted web of rules. Federalism presupposes that the federal agencies are working with state agencies to develop workable and understandable rules and standards. Unfortunately, the WEC proposed rule is an example of this administration's top down approach with little care given to the producing state's concerns, or the adverse consequences to her citizens and industry.

I have written to you before about the comment fatigue states like Wyoming face. This proposed rule is a great example of adding to the fatigue since there are other proposed rules from EPA that would affect our comments that are not yet final. There is little doubt this proposed rule will likely have significant regulatory and economic impacts on Wyoming and our oil and gas producers, but identifying those impacts is virtually impossible since it is tiered off the proposed Greenhouse Gas Reporting Proposed Rule and Methane Fee Proposed Rule. This stacking renders accurate analysis highly speculative because we are basing comments on what might be.

At the same time, the BLM's proposed rule on methane waste prevention adds another layer of speculation and duplication.

The WEC is assessed based on metric tons of CO₂ reported through the GHGRP, however, the final Subpart W regulations that will revise the GHGRP have not yet been released. The draft Subpart W regulations released on August 1, 2023, include revised emission factors that would lead to overestimation of methane emissions from pneumatic controllers and pumps, and combustion engines. Under the draft Subpart W regulations, operators would use prescribed emission factors. While the IRA directs revisions to the Subpart W reporting to allow for greater use of empirical data, the draft regulations would make it more difficult to use empirical data to prove when emissions are low. If empirical data is not allowed, even producers of differentiated natural gas with very low methane intensity rates would have to pay a WEC.

The current federal administration appears to be throwing numerous proposals to address methane emissions from the oil and gas industry at the wall to see what sticks. It would be far more prudent, efficient, and fair to the states to put the WEC proposed rule on hold until the Greenhouse Gas Reporting Rule is final.

The proposed rule provides a bait and switch when offering exemptions to the emissions charge. For example: under the Clean Air Act Section 136(f)(6), if a single facility spans more than one state then all of the states the facility is located in must have plans approved. However, based on the preamble and the EPA insertion of the phrase "on a nationwide" basis it appears EPA intends to withhold the exemption from qualified facilities unless all states in the nation have approved plans. This unfairly penalizes facilities in states that undertake the immense amount of work necessary to get a state plan approved and is not consistent with the underlying law. This could also be weaponized by states who are opposed to oil and gas operations by intentionally delaying the development of a state plan for as long as possible, causing operators to pay the WEC for as long as possible, imposing potentially significant costs on the oil and gas industry. This eliminates an exemption that was included in the Clean Air Act and would increase the costs imposed on the oil and gas industry making it more difficult to operate, even in states that followed the language of the law and developed their state plan.

In addition, the unreasonable delay exemption is defined as a permit that has been processing for at least 30-42 months. In other words, companies will be subject to the WEC, through no fault of their own, for three years due to permitting delays before they can apply for the exemption.

If a facility has one monitoring occurrence showing it is out of compliance with what are referred to as OOOOb/c requirements during the year, the facility will be deemed to be out of compliance for the whole year. They would not be eligible for the OOOOb/c exemption, and will be subject to the WEC for the entire year. This includes any instance of noncompliance with emission standards, work practice standards, monitoring, reporting, and recordkeeping requirements.

In closing, my comments are partially a compilation of comments written by Wyoming's Department of Environmental Quality and the Wyoming Oil and Gas Commission. Since they are succinct, I have attached them for your review. This rule should not be promulgated without meaningful and significant cooperation with the state regulatory agencies. The cumulative effect of the various proposed rules has an exponential effect upon the oil and gas industry in Wyoming and across the nation. I also encourage you to sign the Memorandum of Agreement (MOA) with the Interstate Oil and Gas Compact Commission. The MOA lays out a framework for the EPA to work more cooperatively and efficiently with the state regulators. Implementation of the MOA could iron out the type of unworkable and duplicative provisions to the benefit of both federal and state regulators, and the oil and gas industry.

Thank you for your consideration of Wyoming's comments.

Sincerely,



Mark Gordon
Governor of Wyoming

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Attachments: DEQ Comments on WEC
WOGCC Comments on WEC