United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510–6150

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March 26, 2024

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

RE: Docket No. EPA-HQ-OAR-2023-0434

Dear Administrator Regan:

I am writing to express my significant apprehensions regarding the "Waste Emissions Charge for Petroleum and Natural Gas Systems" rule (WEC Rule) and "Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems" (Subpart W Rule) proposed by the Environmental Protection Agency (EPA). I am profoundly disheartened that instead of prioritizing genuine emissions reduction efforts, these rules seem intended to serve as yet another avenue to raise the costs of domestic energy production, disregarding the laws actually passed by Congress.

EPA's significant delays implementing these two rules has created a situation that is unfair to regulated companies and inconsistent with Congressional intent. Since energy companies are liable for fees on methane emitted beginning this year, it is unacceptable that EPA waited over a year and a half after the passage of the Inflation Reduction Act (IRA) to propose a rule for implementing the waste emissions charge (WEC) and that the majority of the $1.55 billion in grant funding provided by the IRA for methane reduction is still not available to apply for. Furthermore, EPA's delay in implementing the new Subpart W Rule until at least 2025 is another clear violation of the IRA, which required updated reporting standards to be completed by this upcoming August so that fees on methane emissions would be based on more accurate data, including facility owners' own empirical data.[1] Given these failures, EPA should provide the maximum amount of flexibility when implementing the WEC for 2024 emissions so that energy companies are not liable for fees when they have not yet been given fair notice and opportunity to avoid them, as Congress intended.

Turning to the substance of the proposed rules, my first concern is that the Subpart W Rule ignores the clear requirements of the IRA to "allow owners and operators of applicable facilities to submit empirical emissions data" under Subpart W for emissions that may be subject to WEC. Instead, EPA is mandating the use of emission factors for gathering lines and certain engines, which is unlawful and must be

[1] 42 U.S.C. 7436(h).

rectified in the final rule, as the IRA does not provide EPA flexibility to selectively exclude certain facility types. In the case of gathering lines, this method predominantly uses pipeline mileage as the basis for emissions calculations. Just because a pipeline exists does not mean that it leaks, and this approach penalizes conscientious operators who diligently monitor their pipelines and promptly address identified leaks.

Furthermore, the Subpart W Rule imposes significant constraints on the use of advanced emissions measurement methods, discouraging innovation to reduce emissions. For instance, operators must conduct 50 leak measurements to establish site-specific emissions factors if they wish to rely on their own data instead of EPA's generic emissions factors, posing challenges for those with fewer sites or infrequently used components. These stringent testing requirements seem designed to discourage operators from submitting their own data. The final Rule should remove such restrictions that impede the adoption of innovative technologies and instead opt for regulatory flexibility and technological impartiality.

Regarding the WEC Rule, the rule proposes an overly restrictive stance on the IRA's allowance that multiple facilities under "common ownership or control" and subject to the WEC be permitted to calculate their aggregate fee based on net emissions[2]—so that operators are incentivized and get credit for facilities with emissions well below WEC thresholds, not just penalized for emissions above the threshold. It is common sense that facilities with the same parent company are under "common ownership or control" by that company. But EPA is proposing to prohibit netting at the parent company level, violating Congress's intent in the IRA to incentivize emissions reduction across a corporate enterprise. This limitation introduces unnecessary administrative hurdles for industry and permitting agencies nationwide. In the final WEC Rule, EPA should correct this to allow netting at the parent company level and incentivize the most significant overall reductions in a cost-effective manner.

Finally, the WEC Rule incorrectly interprets the Regulatory Compliance Exemption included in the IRA, which exempts facilities from the WEC once "methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities." The exemption was designed to promote proactive compliance and incentivize individual states to promptly finalize their plans under 111(d) by linking the exemption to the implementation of methane emissions standards and plans on a state-by-state basis. The reference to "all States" in the law refers to those States in which each applicable facility or facilities seeking exemption are located—including this language was necessary because a single facility may be located in more than one state. However, EPA proposes to apply this exemption only after *every* state in the nation has a plan in place, contradicting the IRA's intention of a tailored, state-specific approach and obliterating the incentive for energy companies to support their states promptly finalizing methane emissions plans. EPA's assertion that a state-by-state approach would unfairly advantage or disadvantage WEC applicable facilities based on their geographic location is misplaced—on the contrary, obligating fast-moving states to wait for others disadvantages and discourages proactive compliance and emissions reductions.

I look forward to your prompt response to my continued concerns about the impact of these rules on West Virginia and the nation.

Sincerely,

JOE MANCHIN III
U.S. Senator

[2] 42 U.S.C. 7436(f)(4).