

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-3641
Minority (202) 225-2927

June 9, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

We write regarding the U.S. Environmental Protection Agency's (EPA) proposals for new methane regulations under Section 111 of the Clean Air Act (CAA) and the agency's implementation of the Methane Emissions Reduction Program under Section 60113 of the Inflation Reduction Act of 2022 (IRA). The EPA's regulatory proposal for methane creates substantial legal and regulatory uncertainty, which discourages energy production and increases energy prices. The EPA is also planning to add to the regulatory burden with a new tax on methane emissions. As the Congressional Budget Office determined, a tax on methane emissions will increase operational costs, reduce energy production, and increase the price of natural gas.¹

On November 2, 2021, EPA proposed three separate actions to regulate methane emissions from new and existing oil and gas well sites, compressor stations, processing plants, and transmission and storage facilities.² This proposal would dramatically expand EPA's regulatory reach, and it would undercut rules issued under the prior administration that removed regulatory duplication and would have saved millions of dollars each year.³ The EPA's proposal violates statutory requirements under CAA Section 111 that require, as a predicate to establishing regulations for new sources, a finding that methane emissions from a source significantly contributes to air pollution that endangers public health or welfare. The EPA's proposal also imposes improper requirements on States to issue additional methane regulations for existing sources under CAA Section 111(d).

¹ See

<https://www.cbo.gov/publication/58444#:~:text=30%20Section%2060113%20of%20the,emissions%20affects%20outcomes%20as%20well>.

² See "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review," 86 Fed. Reg. 63110 (November 15, 2021).

³ See "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review" 85 Fed. Reg. 57018 (September 14, 2020).

Energy facilities subject to EPA's aggressive regulatory proposals must also plan for compliance with EPA's new Methane Emissions Reduction Program, under which EPA will impose and collect a tax on the reported metric tons of methane emissions that exceed certain thresholds, based on the type of facility, and the amount of natural gas sent to sale. There are several aspects of the methane tax that are undefined in statute, and since there was no hearing, committee report, or debate in Congress, there are significant questions about how the methane taxes and regulations will interact with each other.

While the CAA contains exemptions for regulatory compliance, and when there is a lack of pipeline infrastructure available, it is unclear how EPA will calculate the tax and which operators will be forced to comply. There are also questions about how emissions are reported, whether EPA is coordinating with States, and when EPA will enforce compliance with new taxes and regulations.

To assist with our review of EPA's authorities for methane taxes and regulations under the CAA, we ask that you provide responses to the questions and requested documentation below, no later than June 23, 2023.

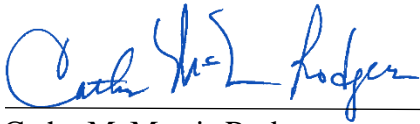
1. What is the status and timeline of the proposed regulations under subsection (b) and (d) of Section 111 of the CAA?
2. What is the status and timeline of EPA's implementation of the Methane Emissions and Waste Production Incentive Program?
3. How will the EPA calculate the methane tax?
4. Many of the provisions in the methane tax are based on excess emissions related to natural gas sales.
 - a. Since the chemical composition and properties of natural gas differ regionally and is not continuously monitored, how will the EPA require operators to calculate the mass of natural gas sales?
 - b. Will operators be challenged by EPA's office of enforcement and compliance or subject to audits?
5. The EPA requires reporting from facilities above an emissions threshold of 25,000 metric tons of CO₂e under Subpart W of 40 C.F.R. Part 98. Subpart W is an approximate emissions estimating tool that wasn't designed for tax collection purposes.
 - a. How does the EPA intend to revise the requirements for emissions reporting under Subpart W? If so, what is the timeline for those revisions?
 - b. How will the EPA provide guidance to small operators regarding the calculation of the 25,000 metric ton threshold to avoid unnecessary regulatory burdens or audits by EPA enforcement?
6. How will the EPA enforce compliance with methane taxes and regulations?
 - a. How soon after finalizing the Methane Emission Reduction Program does the EPA intend to begin enforcement?

- b. Will the EPA penalize operators for non-compliance?
 - c. Will the EPA use the methane tax to initiate enforcement actions?
7. How does the EPA interpret the statutory exemptions to the methane tax?
 - a. Will EPA notify operators that they are exempt from the methane tax?
 - b. The EPA is required to exempt methane emissions “caused by unreasonable delay...in environmental permitting of gathering or transmission infrastructure necessary for offtake.” How will the EPA make such determinations?
 - c. The EPA is required to exempt operators of facilities “subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111...” Please describe the steps that the EPA is taking to harmonize the new taxes and regulations for methane.
8. Please describe how the EPA is coordinating with States on its implementation of the methane tax.
 - a. For example, existing source regulations may be predominantly implemented by States under 40 CFR Part 60 Subpart OOOOc. How is the EPA planning to assure that the required exemptions will be available to operators?
9. Please describe how the EPA is coordinating with relevant stakeholders on its implementation of the methane tax.
10. Please provide an accounting of all financial assistance provided, or proposed to be provided, and the type (*e.g.* grants, rebates, contracts, loans, or other activities) under the Methane Emissions Reduction Program.
11. Please describe any technical assistance provided by the EPA to the States or regulated owner or operators of oil and natural gas facilities.
 - a. Please explain how the EPA will avoid using technical assistance to owners and operators of oil and natural gas facilities to initiate enforcement actions.
12. Please describe any Executive Orders that may apply to the Methane Emissions Reduction Program or new methane regulations.
13. Will the EPA utilize the Social Cost of Carbon, the Social Cost of Methane, or other tools or models to estimate environmental costs related to climate change to implement the Methane Emissions Reduction Program? Will the EPA utilize such tools or models to develop new regulations for methane emissions under Section 111 of the CAA?
14. On April 21, 2023, President Biden signed Executive Order 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All,” requiring a “whole-of-government” approach to environmental justice.
 - a. Does this Executive Order apply to EPA, and if so, how does EPA plan to comply with the Executive Order regarding the Methane Emissions Reduction program and new regulations for methane emissions under Section 111 of the CAA?

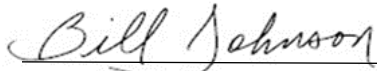
15. Will the EPA incorporate “equity benefits,” a term used in the May 5, 2023, proposed rule for natural gas pipeline leak detection and repair issued by the Pipeline and Hazardous Materials Safety Administration, in the methane tax and/or the new regulations for methane emissions under Section 111 of the CAA?
 - a. If so, please describe the EPA’s statutory authority and methodology for estimating “equity benefits” for use in agency rulemaking.

If you have any questions about this request, please contact Brandon Mooney, Elise Krekorian, or Mary Martin with the Majority staff at (202) 225-3641.

Sincerely,



Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce



Bill Johnson
Chair
Subcommittee on Environment, Manufacturing, and Critical Materials