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U.S. Environmental Protection Agency Proposes Rules to Implement Methane Emissions Fee for Oil and Natural Gas Sources

By Samuel B. Boxerman, Timothy K. Webster, Brittany A. Bolen and Jim Wedeking*

In this article, the authors review a rule proposed recently by the U.S. Environmental Protection Agency to implement the "Methane Fee" established by the Inflation Reduction Act of 2022.

The U.S. Environmental Protection Agency (EPA) has published a proposed rule[1] to implement a "Waste Emissions Charge for Petroleum and Natural Gas Systems" – commonly referred to as the "Methane Fee" – established by the Inflation Reduction Act of 2022 (IRA). The IRA codified the "Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems" in a new Section 136 of the Clean Air Act (CAA) and directed EPA to issue implementing rules to calculate the charge and determine eligibility for exemptions provided by the IRA.

As proposed, EPA's regulatory framework for the Methane Fee could impose significant new costs each year across the oil and natural gas sectors beginning in March 2025. In its Proposed Rule, EPA:

- Provides details on how the agency expects sources to determine the emissions threshold above which sources must apply the per-ton charge to calculate their total Methane Fee;
- Defines the exemptions Congress included in the IRA; and
- Prescribes how sources can net emissions across commonly owned facilities when calculating the charge.

HOW IT WORKS

The IRA imposed the new fee on nine categories of "applicable facilities" reporting more than 25,000 metric tons of carbon dioxide equivalent (CO_2e) of greenhouse gas emissions under EPA's Greenhouse Gas Reporting Rule, found in 40 CFR Subpart W:

- Offshore petroleum and natural gas production;

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[1] https://www.epa.gov/system/files/documents/2024-01/wec-proposed-rule-fr_1-26-2024.pdf.

- Onshore petroleum and natural gas production;
- Onshore natural gas processing;
- Onshore natural gas transmission compression;
- Underground natural gas storage;
- Liquified natural gas (LNG) storage;
- LNG import and export equipment;
- Onshore petroleum and natural gas gathering and boosting; and
- Onshore natural gas transmission pipelines.

The statute sets three different thresholds for "applicable facilities" to determine the amount of excess emissions used to calculate the charge, principally based on the percentage of natural gas sent to a sales line or passing through a facility.

Categories of "Applicable Facilities"	**Emissions Threshold Used to Calculate Fee**
Onshore and offshore petroleum and natural gas production facilities	Emissions that exceed 0.20% of natural gas sent to sale from the facility *or* 10 metric tons of methane per million barrels of oil sent to sale if no natural gas was sent to sale from the facility
Onshore natural gas processing, LNG storage, LNG import and export equipment, or onshore petroleum and natural gas gathering and boosting facilities	Emissions that exceed 0.05% of the natural gas sent to sale "from or through" the facility
Onshore natural gas transmission compression, underground natural gas storage, or onshore natural gas transmission pipeline facilities	Emissions that exceed 0.11% of the natural gas sent to sale "from or through" the facility

Under the Proposed Rule, EPA incorporates these thresholds into an equation to determine whether a facility is ultimately an "applicable facility" subject to the Methane Fee. EPA provided an example of how a threshold would be calculated for an onshore oil or gas production facility that reports emissions of 3,000 metric tons of methane:

- Waste emissions threshold = throughput x segment-specific intensity x density of CH_4
- Waste emissions threshold = 60,000,000 Mscf x 0.002 x 0.0192 mt/Mscf
- Waste emissions threshold = 2.304 mt CH_4

As prescribed by the IRA, for each ton of methane above the "waste emissions threshold," the applicable facility must pay $900 in 2025 for its excess 2024 emissions, with the charge increasing to $1,200 in 2026 for 2025 excess emissions and to $1,500 in 2027 and each year beyond for the preceding year's excess emissions. Facilities must calculate and pay the Methane Fee for the prior year's emissions by March 31, the same date in which Subpart W annual reports are due to EPA. Thus, if the facility in the example above emits 3,000 metric tons of methane in 2024, then it would exceed its threshold by 696 tons, subjecting it to a $626,400 charge due to EPA by March 31, 2025. EPA is taking comment on whether the initial filing deadline should be extended for the first reporting year.

EXEMPTIONS

The IRA created two principal exemptions that EPA's Proposed Rule further defines.

The first is the "Compliance Exemption," which exempts an applicable facility that complies "with methane emissions requirements" under CAA §§ 111(b), (d) ("Methane Emissions Standards") if EPA determines (i) that methane regulations for new and existing sources "have been approved and are in effect in all States," and (ii) result in "equivalent or greater emissions" reductions than what would have been achieved by a 2021 proposed version of the Methane Emissions Standards.

The second is the "Unreasonable Delay Exemption," which exempts a source for methane emissions "caused by unreasonable delay, as determined by [EPA] in environmental permitting of gathering or transmission infrastructure." This would apply to onshore oil production that lacks the infrastructure to capture associated gas.

The IRA also provided a third exemption for emissions from wells that have been permanently shut-in or plugged in the preceding year, subject to EPA approval.

Compliance Exemption

The Compliance Exemption Is Available for Four Source Categories

The Methane Emissions Standards apply to four of the nine source categories subject to the Methane Fee, referred to in the Proposed Rule as "affected facilities":

(1) Onshore petroleum and natural gas production;

(2) Onshore natural gas processing;

(3) Onshore natural gas transmission compression; and

(4) Onshore petroleum and natural gas gathering and boosting.

The remaining five categories – offshore production, underground natural gas storage, LNG storage, LNG import and export, and gas transmission pipelines – are not regulated by the Methane Emissions Standards and cannot be covered by the Compliance Exemption.

EPA's "Effectiveness Determination" and "Equivalency Determination" Must Be Made Before the Exemption Could Apply

For the four eligible source categories, under the Proposed Rule, the sources likely would have to wait several years before the exemption could apply because EPA must first make two determinations.

- *Effectiveness Determination.* First, EPA must determine that the Methane Emissions Standards regulations for both new and existing sources of methane are "in effect" (the "Effectiveness Determination"). Standards for new sources (Subpart OOOOb – or Quad Ob) will be in effect 60 days after EPA publishes the final Methane Emissions Standards in the Federal Register (a prepublication version of the final standards was released December 2, 2023, but has not yet published in the Federal Register). Standards for existing sources will take years to come "in effect." States must first draft existing source standards and submit them to EPA for review and approval. Under the Methane Emissions Standards, states have two years to submit their proposal to EPA – and EPA has up to one year to complete its review. If EPA rejects a state's submission, EPA must then propose and finalize a federal existing source standard for that state. Thus, it could take four to five years or more before every state standard is in effect. However, under its proposal, EPA will not make an Effectiveness Determination until every last state plan is either accepted by EPA or a substitute federal plan is final and in effect. EPA rejects making a state-by-state effectiveness determination that would allow the Compliance Exemption for sources in states with accepted plans, or a new source-only effectiveness determination, as contrary to the statute. And this timeline does not account for the potential of protracted litigation over EPA's decision to grant or deny a state submission or a subsequent federal standard.
- *Equivalency Determination.* Second, once all new and existing regulations are in effect, EPA must determine whether they – on an aggregated, nationwide basis – will reduce methane emissions by an equivalent or greater amount than the 2021 proposed rulemaking would have if it was finalized (the Equivalency Determination). However, because states must draft their own existing source regula-

> tions and submit them for EPA approval under both the final Methane Emissions Standards and the 2021 proposed rule, EPA must make assumptions about what states would have done under the 2021 proposed rule. For purposes of establishing a baseline, EPA will assume that all states would have applied EPA "guidelines" for existing source standards (found in Subpart OOOOc, or Quad Oc) without any adjustment for remaining useful life or other factors (known as RULOF, a CAA statutory exception that provides states flexibility in setting standards for existing sources in certain circumstances). This assumption will establish a stringent baseline for comparison and limit a state's ability to apply RULOF in its existing source regulations.

The Compliance Exemption Would Apply to the Entire "Affected Facility"

Under the CAA, an "affected facility" may include several emission sources. Only some of these may be subject to the Methane Emissions Standards. In the Proposed Rule, EPA interprets the IRA as applying the Compliance Exemption to the entire "affected facility" even if there is only one emission source subject to the Methane Emissions Standards.

"Compliance" Means No Deviations or Violations

An affected facility would qualify for the Compliance Exemption only if it reports no deviations of any kind for any emissions source subject to the Methane Emissions Standards. As proposed, this appears to mean any monitoring, reporting, or recordkeeping violations, no matter how minor, could eliminate a facility's ability to claim the exemption. Moreover, a facility would have to provide a written representation that each regulated emission source was in full compliance with the Methane Emissions Standards for the entire year – on an annual basis. All such representations are subject to the CAA's prohibition on knowingly making false statements.

Deviations and Enforcement Actions

If an affected facility discovers that an emission source was in violation of the Methane Emissions Standards, despite previously representing there were no violations, it will lose the Compliance Exemption and have to pay the avoided Methane Fee. If that affected facility self-reports the noncompliance within 45 days of discovery, it would not have to pay an interest penalty on the avoided Methane Fee. However, where violations are discovered by an agency or a third party, the affected facility must pay an interest penalty.

Unreasonable Delay Exemption

The IRA allows applicable facilities to claim exemptions where "eligible delays in environmental permitting of gathering or transmission infrastructure"

prevents the "offtake of increased volume as a result of methane emissions mitigation implementation." Under the Proposed Rule, any applicable facility seeking to claim the "Unreasonable Delay Exemption" would have to meet four criteria:

(1) It exceeds the waste emission threshold;

(2) The exempted emissions are from flaring due to delays in permitting gathering or transmission lines or compressor stations necessary to offtake associated gas;

(3) A certain amount of time must have passed between submitting the permit application and claiming unreasonable delay; and

(4) The owner or operator seeking the permit cannot have contributed to the delay.

Two aspects of the proposal would narrow the scope of this exemption.

First, with respect to criterion (3), EPA is proposing that 30 to 42 months is an "unreasonable amount of time" after the submission of a permit application, based on its review of large, high-priority federal projects processed under the FAST-41 program.

Second, with respect to criterion (4), an applicant contributes to the delay if it takes more time to respond to a state permitting agency's request for additional information than the agency requested (e.g., the state agency requests a response within 14 days and the applicant takes 22 days).

If the state agency did not set a time to respond, then EPA will impose a default time limit of 30 days to respond to the request, regardless of the scope of the request. Further, if the applicant can meet these criteria, it must submit engineering calculations or other records to establish to EPA's satisfaction the methane emissions that would have been avoided had the permit been timely issued.

NETTING EMISSIONS ACROSS MULTIPLE APPLICABLE FACILITIES

The IRA allows companies to net emissions "for facilities under common ownership or control" by "account[ing] for facility emissions levels that are below the applicable threshold within and across all applicable segments." Properly applied, this could provide a significant source of relief for large companies with multiple facilities. However, the Proposed Rule interprets the netting provision to prohibit including facilities that are either below the Subpart W 25,000 ton CO_2e threshold or subject to the Compliance Exemption by reasoning that such facilities are not "applicable facilities" subject to the Methane Fee. The Proposed Rule reads the IRA as prohibiting companies

from netting their Methane Fee down to zero. Netting will be performed using an equation proposed under new 40 C.F.R. § 99.21 using the existing Subpart W definition of "common ownership or control."