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Client Alert
Commentary

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US EPA Proposes Methane Emissions Fees for Oil and Natural Gas Industry

The WEC Rule would impose fees for oil and gas facilities reporting a certain amount of greenhouse gas emissions per year.

On January 26, 2024, the US Environmental Protection Agency (EPA) published in the Federal Register a proposed new rule that will charge oil and gas facilities a fee for methane emissions exceeding a certain threshold.[1] The Waste Emissions Charge for Petroleum and Natural Gas Systems regulation (the WEC Rule), implemented pursuant to the Inflation Reduction Act (IRA), explains rule applicability, how the emissions threshold would be calculated, and circumstances in which facilities may be exempt from the fee. EPA estimates that this program, once implemented, will reduce cumulative methane emissions by over 960,000 metric tons by 2035.[2]

Background on the Methane Emission Reduction Program

The IRA, passed in August 2022, added a section to the Clean Air Act creating a Methane Emission Reduction Program (MERP) for petroleum and natural gas systems.[3] Under this program, Congress directed the EPA to take action on three fronts to reduce methane emissions:

1. Provide financial and technical assistance to support activities aimed at reducing greenhouse gas emissions from petroleum and natural gas systems, including shutting in and plugging wells, monitoring methane emissions, improving the equipment used to reduce methane emissions, and supporting environmental restoration[4]

2. Revise the reporting requirements for applicable oil and gas facilities under Subpart W of the Greenhouse Gas Reporting Program (GHGRP) to ensure more accurate, empirically-derived reporting of methane emission data[5]

3. Impose and collect a Waste Emissions Charge (WEC) for oil and gas facilities emitting methane above a certain threshold[6]

The proposed rule provides the specifics of the WEC program contemplated in the IRA related to methodology, eligibility, and reporting requirements. The purpose of the WEC Rule is to target high-emitting oil and gas facilities and incentivize action to reduce methane emissions.

If instituted, the first WEC assessment will be calculated based on data collected starting January 1, 2024. The first WEC filing will be due on March 31, 2025, with future filings due on an annual basis.[7]

Who Is Impacted?

The WEC fees would apply to certain oil and gas facilities reporting at least 25,000 metric tons of carbon dioxide-equivalent emissions per year under GHGRP Subpart W. Under the proposed approach, a WEC-obligated owner or operator would be accountable for any applicable facilities it owned or operated as of December 31 of the reporting year, which addresses reporting responsibilities for facilities acquired or divested mid-year.

Regulated categories and entities include, but are not limited to: (1) pipeline transportation of natural gas, (2) natural gas distribution facilities, (3) crude petroleum extraction, and (4) natural gas extraction. Facilities that fall within one or more of the following industry segments, classified as petroleum and natural gas systems under GHGRP Subpart W,[8] are included in the WEC program:

- Onshore petroleum and natural gas production
- Offshore petroleum and natural gas production
- Onshore petroleum and natural gas gathering and boosting
- Onshore natural gas processing
- Onshore natural gas transmission compression
- Onshore natural gas transmission pipeline
- Underground natural gas storage
- Liquefied natural gas (LNG) storage
- LNG import and export equipment.

In its regulatory impact analysis of the WEC Rule, EPA highlights the extracting, processing, and transporting of petroleum and natural gas products as notable contributors to climate change.[9] EPA calculates that petroleum and natural gas systems accounted for 29.2% of total methane emissions in the US in 2021.[10] By instituting the WEC Rule, EPA aims to incentivize industry players to reduce their methane emissions and mitigate related environmental damage.[11]

Emissions Thresholds

EPA proposes calculating emissions thresholds at the facility level, using calculations based on industry segment-specific methane intensity thresholds. The rule designates a metric for each industry, either in the form of a percentage of a facility's natural gas throughput, or, if the facility sends no natural gas to sale, in a measurement of metric tons of oil throughput.[12] EPA states in the preamble to the proposed rule that it developed these thresholds by focusing on facility efficiency in terms of methane emissions per production unit. Under the proposed threshold calculations, a more efficient facility's emissions are more likely to fall below the threshold, and the facility would not be subject to the WEC.[13] Additionally, this proposed approach does not require facilities to collect additional information on the constituents or density of natural gas throughput.[14] These thresholds can be calculated using data already reported under GHGRP Subpart W, potentially avoiding the burden of requiring facilities to collect and report additional detailed data.[15]

To calculate the WEC, the facility waste emissions threshold is subtracted from the facility's total methane emissions. If that number is negative, the facility is below the waste emissions threshold and no WEC is applied. For facilities with positive numbers (i.e., with emissions over the threshold), the WEC only applies to the incremental emissions above the threshold. The proposed charge ramps up over a scheduled three-year period, as shown in the table below.

Reporting Year	Waste Emission Charge per Metric Ton of Methane Over Threshold
2024	$900
2025	$1,200
2026 onwards	$1,500

The WEC Rule does allow facilities under common ownership or control to aggregate emissions across those facilities. In such cases, the amount of methane below the threshold at some facilities may be used to "net" against the emissions exceeding the threshold at other facilities, leading to reduced fees or even avoidance of fees altogether. This type of netting could provide some compliance flexibility for entities with multiple facilities subject to the WEC Rule.

Exemptions

The proposed rule includes three exemptions under which a facility's WEC may be lowered or eliminated entirely.

Permitting Delays: Emissions from gas flaring may be exempt from the WEC if those emissions were caused by an unreasonable delay in environmental permitting. The facility seeking an exemption cannot have contributed to the delay, and must have been in compliance with all applicable local, state, and federal regulations. The EPA did not clarify exactly how long of a delay is considered "unreasonable," but the proposal contemplates a time period between 30 and 42 months from the date the relevant permitting authority deemed the permitting application complete, after which emissions would be exempt from the WEC.

Regulatory Compliance: Facilities that are subject to and in compliance with the EPA's December 2023 methane rule[16] could be exempt from the WEC if certain conditions are met. Under the December 2023 rule, states have two years to develop and submit plans to the EPA regarding how they will reduce methane from existing sources. In the proposed WEC Rule, the EPA clarified that facilities will only be exempt from the fee once **all** state plans have been approved by the EPA. Accordingly, a facility in a state that turns in a plan more quickly would **not** be exempt before a facility in a state that has yet to submit its plan. This exemption ultimately would benefit facility owners and operators in compliance with the EPA methane rule, even if their facilities are above the WEC threshold. EPA is also proposing that facilities receiving the regulatory compliance exemption will be considered to have zero WEC-applicable emissions, and therefore would not be eligible for any "netting" analysis with other facilities under common ownership or control.[17]

Plugged Wells: EPA includes an incentive for petroleum and natural gas facilities to permanently shut in and plug wells. As the proposal explains, "plugged wells have lower methane emissions than active wells and unplugged inactive wells; therefore, plugging wells will reduce total facility emissions potentially subject to WEC."[18] Methane emissions that occur at the well-level in the year the well was plugged will be exempt from the fee, so long as the well has been permanently sealed to prevent any future oil or gas leaks.

Next Steps

EPA is accepting public comments on the proposed rule until March 11, 2024.[19] In the proposed rule, EPA has specifically requested public input on a number of issues, including:

- the definition of "WEC-applicable facility" as it applies to facilities that report under two or more defined industry segments;[20]
- the treatment of gathering and boosting and natural gas processing facilities that emit methane and report under GHGRP Subpart W, but do not send gas to sale;[21]
- whether WEC-applicable facilities receiving the regulatory compliance exemption should be considered to have zero WEC-applicable emissions and not participate in "netting" across facilities under common ownership or control, and any other options for treatment of these facilities with respect to netting;[22]
- an approach to the regulatory compliance exemption that would reach determinations on a state-by-state basis as each state plan was finalized or approved, as opposed to the current approach by which the exemption would not apply until **all** state plans are approved;[23]
- alternative approaches for the regulatory compliance exemption in which the exemption would become effective either (1) for facilities in the next calendar year after all conditions are met, or (2) for a portion of the reporting year based on when all exemption requirements are met. The current approach provides that the exemption will take effect in the reporting year in which required conditions are met;[24]
- whether to allow facilities to resubmit WEC data for historic reporting years, as well as how these changes would be incorporated into netting for historic reporting years;[25] and
- the current proposed daily penalty of $55,808, up to a maximum of $446,456, for unsubmitted WEC filings.[26]

Latham & Watkins will closely follow further developments related to this EPA rulemaking.

If you have questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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Endnotes

[1] 89 Fed. Reg. 5,318, Waste Emissions Charge for Petroleum and Natural Gas Systems (Jan. 26, 2024), available at: https://www.govinfo.gov/content/pkg/FR-2024-01-26/pdf/2024-00938.pdf (hereafter the Proposed Rule).

[2] *Id*. at p. 5,360.

[3] Inflation Reduction Act Section 60113; *see also* Clean Air Act Section 136.

[4] IRA Section 60113(a)(3).

[5] IRA Section 60113(a)(1); IRA Section 60113(h).

[6] IRA Section 60113(c).

[7] Proposed Rule at p. 5,350.

[8] 40 C.F.R. 98.230.

[9] US Environmental Protection Agency (EPA) "Regulatory Impact Analysis of the Proposed Waste Emissions Charge" (2024), available at: https://www.epa.gov/system/files/documents/2024-01/wec_ria.pdf, at 2-6.

[10] EPA "Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2021" (2023), available at: https://www.epa.gov/system/files/documents/2023-04/US-GHG-Inventory-2023-Main-Text.pdf, at ES-13. Petroleum systems accounted for 50.2 MMT CO2 Eq of CH4 emissions in 2021 (p. 3-75), and natural gas systems accounted for 181.4 MMT CO2 Eq. (3-92). Total CH4 emissions in 2021 across all industries accounted for 793.4 MMT CO2 Eq. (ES-13).

[11] EPA, "Regulatory Impact Analysis of Proposed Waste Emissions Charge" (2024), available at https://www.epa.gov/system/files/documents/2024-01/wec_ria.pdf, at 2-7.

[12] Proposed Rule at p. 5,326; *see also* Proposed Rule, Table 2, at p. 5,325.

[13] Proposed Rule at p. 5,320.

[14] Proposed Rule at p. 5,326.

[15] Proposed Rule at p. 5,327.

[16] Final Rule: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, available at: https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsps-eg-climate-review-2060-av16-final-rule-20231130.pdf.

[17] Proposed Rule at pp. 5,330-31.

[18] Proposed Rule at p. 5,347.

[19] Proposed Rule at p. 5,318.

[20] Proposed Rule at p. 5,324.

[21] Proposed Rule at p. 5,328.

[22] Proposed Rule at pp. 5,331-32.

[23] Proposed Rule at pp. 5,337-38.

[24] Proposed Rule at p. 5,340.

[25] Proposed Rule at p. 5,351.

[26] Proposed Rule at p. 5,352. The proposed daily penalty is based on the penalty rates provided in 42 U.S.C. 7413(d)(1) [civil penalties related to Federal enforcement of Clean Air Act violations], as specified in Table 1 of 40 C.F.R. 19.4.