

What You Need to Know

EPA to Propose New Methane Regulations for Oil and Gas Sector

In the upcoming weeks, the Environmental Protection Agency (“EPA”) is expected to release a proposed rule that would greatly expand methane regulations for the oil and gas sector. While EPA has previously issued regulations for a smaller group of “new, modified or reconstructed” sources, these new regulations would apply to all existing sources, and may contain additional requirements beyond what EPA currently requires under Clean Air Act Subparts OOOO and OOOOa (also known respectively as Quad O and Quad Oa). There will be an opportunity to offer formal comments on EPA’s proposal in the weeks immediately after it is released.

A Brief History of EPA’s Methane Regulations for the Oil and Gas Industry

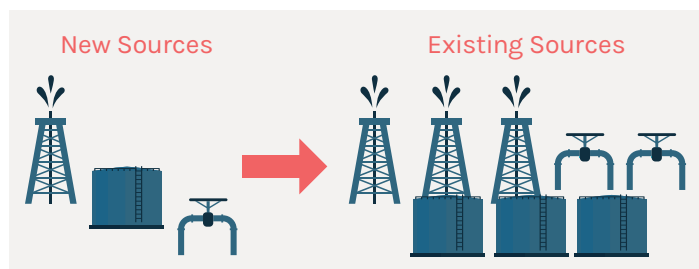
In 2016, EPA finalized the New Source Performance Standards (“NSPS”) for volatile organic compounds (“VOCs”) and methane emissions from the oil and gas sector, which is commonly referred to as “Quad Oa.” Under Quad Oa, EPA regulated methane from the oil and gas sector for the first time. Before then, EPA had only regulated VOCs from the sector, and since VOCs and methane both come from natural gas leaks, the previous regulations (known as “Quad O”) had the effect of also limiting methane emissions.

Quad O and Quad Oa only apply to “affected sources” that are new, modified, or reconstructed after the rule’s effective dates — August 23, 2011 and September 18, 2015, respectively. They do not apply to any of these sources (like pneumatic pumps and storage tanks) that existed before those dates. As a result, these new source rules have impacted only a fraction of sources. But the bigger impact

will come when EPA makes good on their current plan to regulate methane from all existing sources in the oil and gas sector — a much larger group of sources and potential emissions.

The Trump EPA unsuccessfully attempted to stay the effective date of Quad Oa in early 2017. Though Quad Oa ultimately remained effective, the Trump EPA also decided to reconsider whether Quad Oa should be changed. In August 2020, the Trump EPA completed its reconsideration process by issuing a new Methane Rule, which made changes to both Quad O and Quad Oa. Perhaps the most significant change was to remove methane as a pollutant regulated under Quad Oa. Another important change removed the transportation and storage sectors (including midstream or pipeline companies) of the oil and gas industry from regulation under both Quad O and Quad Oa. In a related Technical Amendment, the EPA revised certain requirements in Quad Oa to streamline implementation of the rule.

But the Methane Rule was short-lived. In January 2021, President Biden issued an Executive Order instructing EPA to consider “suspending, revising, or rescinding” the Methane Rule and proposing new regulations for existing sources in the oil and gas sector by September 2021. Before the EPA could act, Congress and the President disapproved the Methane Rule in June 2021, using the Congressional Review Act. That disapproval caused the previous versions of Quad O and Quad Oa to spring immediately back into effect. The Congressional Review Act allows a new administration to swiftly overturn



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the prior administration's last-minute regulations by a simple majority vote in both chambers of Congress and the signature of the president. It may only be used to overturn regulations that have been adopted within the past 60 "legislative days." The Technical Amendment was not disapproved and remains in effect, though it is inconsistent in some ways with the revived Methane Rule. EPA plans to resolve those inconsistencies in the upcoming rulemaking.

Existing Sources: What to Expect Next from EPA and How to Get Involved

EPA officials have recently indicated that the proposal to regulate existing sources will be released "in the coming weeks," and EPA signaled in its latest unified agenda that the proposed rule might be released in October 2021. EPA has hinted that the proposed regulations will rely on new advancements in methane emissions detection and measurement technologies to potentially impose much more stringent limits than the current Quad Oa requirements.

Unlike an NSPS rule for new, modified, and reconstructed sources, performance standards for existing sources would not be implemented directly by the EPA. Instead, in the unusual case where a new source NSPS regulates a pollutant not otherwise regulated under the Clean Air Act — here, methane — the EPA must propose emission guidelines to be adopted by the states and approved by the EPA. Only if a state fails to adopt the emission guidelines would the EPA move to implement the existing source performance standards directly.

Once EPA releases the proposed emission guidelines for regulating existing sources, it will have to solicit and respond to public comments on the proposal. These comments will form part of the "administrative record" that will serve as the basis for how a court will evaluate the emission guidelines if they are challenged in court after it is finalized. Only arguments raised during the public comment period can be raised in a court challenge. Public comments are also an opportunity to help EPA understand why certain aspects of the proposed emission guidelines might be technically infeasible, cost-ineffective, or overly burdensome in practice. Public comments can also suggest alternative ways to regulate emissions. The public comment period will likely last between 60 and 120 days, after which EPA will spend several months drafting a response and potentially revising parts of the proposed emission guidelines. EPA will then issue a final rule and set a deadline for the adoption and submission of state regulations implementing the emission guidelines. The emission guidelines will include an "effective date" that should give regulated parties a chance to make the necessary changes to come into compliance. EPA recently estimated that it will release a final rule in October 2022.

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