Climate Protection & Restoration Initiative
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March 26, 2024

Michael S. Regan, Administrator
ENVIRONMENTAL PROTECTION AGENCY

Regarding:
Docket EPA–HQ–OAR–2023–0434; FRL–10246.1–01–OAR (RIN 2060–AW02)
40 CFR Parts 2 and 99
Waste Emissions Charge for Petroleum and Natural Gas Systems

Dear Mr. Administrator,

This is to comment on Docket OAR–2023–0434 concerning implementation of a *Waste Emissions Charge for Petroleum and Natural Gas Systems*.

In 2022, in a citizens' petition on behalf of experts James E. Hansen, Donn J. Viviani, John Birks, Lise Van Susteren, Richard Heede, and the nonprofit organizations Climate Science, Awareness and Solutions and Climate Protection and Restoration Initiative, I requested your action to vault our nation into a leadership position in confronting the climate crisis.

Specifically, we proposed that you utilize your existing authority under federal law to:

(a) impose of a rising fee on the carbon content of fossil fuels, and

(b) commence a rulemaking aimed at an orderly phaseout of the production, distribution, important and use of oil, gas and coal within reach of US law.

I mention this to remind you of our interest in meaningful and efficient efforts, including those employing carbon pricing, to protect and restore a viable climate system. EPA rejected our proposals, however, on the ground, in part, that you were pursuing equivalently effective measures. Accordingly, we had hoped that your proposed implementation of the so-called Methane Waste Emissions Charge, as advanced in the Inflation Reduction Act, might at least amount to "a step in the right direction to ensure that polluters pay for the harm they cause" – to cite one comment already in your docket.

With considerable regret, however, we cannot join that approbation -- in part because the emissions to which the WEC will attach amount only to a small fraction of methane emissions from the US oil and gas sector.[1]

[1] In your draft rule, you report that "WEC would be imposed on less than 15 percent of national methane emissions from petroleum and natural gas systems." We fear, however, that it will be imposed on an even smaller share on those emissions. In particular, your agency recently reported CH4 emissions from US oil and gas facilities of 231.5 MMT CO2-e for the year 2021. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021 at 2-17. In your proposed WEC rule, however, you report that methane emissions subject to WEC for 2024 will be only 830

We understand that Congressionally imposed strictures on the WEC program are a principal cause of its puny size and small projected impact. Nonetheless, we suggest that there are ways you may improve the program, and we here offer two sets of them:

1. Adopt the Jan. 17, 2024, recommendations of your Scientific Advisory Board (SAB) to more fully account for methane emissions from oil and gas facilities

   We share the SAB's concerned that applicable facilities, as defined in proposed the present draft rule at §99.2, will systematically underreport CH_4 emissions to the Greenhouse Gas Reporting Program, both with respect to persistent leakage and large-event emissions. For the WEC program, that will mean that many such facilities with substantial methane emissions will not report, on the (possibly mistaken) ground that they fall underneath statutorily specified waste emissions thresholds. That, in turn, will result in WEC obligations attaching to far fewer facilities; correspondingly, their owners or operators will be presented with far weaker incentives to invest in mitigation efforts.

   Relevant recommendations of your SAB were made with respect to your proposed *Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems*,[2] but they are also in the present docket. We adopt them here by reference and urge your consideration to improve not only the reporting program but the efficacy of the nascent methane WEC program.

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thousand metric tons. That is 23.24 MMT CO2-e, based on our calculation using the same global warming potential (of 28) that you employ in your draft WEC rule. 89 Fed. Reg. 5361, Table 4. Accordingly, we think that WEC-eligible methane emissions will amount at the program's start only to ~10% of such emissions from oil and gas facilities.

[2] *See* **SAB Review of Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas System**. *See also*, Brian Prest, Accurately Quantifying "Super-Emitting" Leaks Is Key for the Methane Fee to Be Effective (Resources: Feb. 6, 2024)

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<u>2. Strengthen your Agency's reading of the common ownership and "netting" provision</u>

As part of the Inflation Reduction Act's provisions establishing WEC, Congress added Clean Air Act §136(f)(4), concerning the "netting" of emissions for facilities under common ownership or control:

> In calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).

(a) Your Agency traditionally interprets such statutory "common ownership or control" language to refer to the direct corporate owner or operator of *a facility*, but you ask for comment on whether, more broadly, a methane emissions charge reporter (or payer) may instead be the parent corporation of the owner or operator, since such a parent corporation is also, read broadly, an owner of the facility.

Our answer is, decidedly, that the netting option should refer only to the common owner of the facility or facilities, but not its parent corporation.

An expansion of EPA's traditional reading of "owner" or "operator" (or, "controller") of a facility to also include the parent corporation of a corporate owner would be technically within the statutory language. Still, such a reading of the terms would serve to undermine the WEC program, since it would even further expand the degree to which the statutes' netting option may serve to reduce the incentive for any facility or commonly-owned facility grouping to mitigate their methane emissions. Accordingly, you should reject the expanded definition.

(b) You have interpreted the above-cited statutory language concerning "netting" to mean that "for all eligible WEC applicable facilities under common ownership or control, the amount of metric tons of methane below the waste emissions thresholds at facilities below the waste emissions threshold may be used to net against the amount of metric tons of methane emissions that exceed the waste emissions thresholds at facilities above the waste emissions threshold."

This, in our view, is an excessively stringent interpretation of the statutory provision because it leads to the absurd result that an owner of multiple highly methane-emitting facilities can zero-out its WEC obligation simply where one of its facilities is running relatively clean.

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Consider, for instance, the hypothetical situations depicted in Graphics 1 & 2, below.

A "Company Greene" scenario is depicted in Graphic 1. The annual emissions from its WEC-eligible facilities (all having annual emissions that exceed the threshold of 25,000 mt of CO2-e) total ~ 5,806 metric tons of CH4. If the methane charge for all such emissions were to attach to these facility emissions, then Greene would need to pay a WEC (waste emissions charge) of $5.2 million. The prospect of *that* charge indeed might be enough for Greene to make early or additional investments to further reduce its methane emissions.

But under the WEC, the methane emissions calculation depends on the degree to which a facility's emissions exceed a calculated waste "emissions threshold." Those thresholds are provided in the graphic in the column headed "Waste Emissions Threshold (mt)."

Notice that each of the Greene facility emissions is substantially lower than the set of "waste emissions thresholds" against which each facility must compare to discern if it retains any "WEC applicable emissions" to report.[3] And here, Company Greene has none. In fact, its facilities' emissions are 20% lower than the facility emissions threshold for each. This means that it has no WEC applicable emissions to report. *See* the last two columns.

What does that mean? Here, it means that Company Green did good because, if nothing else with respect to methane emissions, It Isn't Easy Being Greene.[4] The Company did well perhaps by investing in mitigation technologies and efforts to reduce its emissions down below what Congressional negotiators of the IRA apparently perceived was a reasonably-good performance level.

So now: Consider Company Not-Too-Greene, depicted in Graphic 2. It has total facility annual methane emissions of 7,257.6 metric tons, substantially more than Company Greene. If the 2024 waste methane emissions charge applied, then Not-Too-Greene would need to pay $6.5 million, considerably more, and appropriately more, than Company Greene since the latter had fewer total emissions – even though it had the same number and type of facilities.

[3] In constructing Graphic 1 and the following Graphic 2, I utilized the same through-puts, intensity thresholds, and methane density of 0.0192 mt/Mscf at standard temperature and pressure (60° F and 14.7 psia) that EPA used to calculate waste emissions thresholds in its "Examples of charge calculations under the proposed Waste Emissions Charge," found here: https://www.epa.gov/inflation-reduction-act/waste-emissions-charge#:~:text=The%20WEC%20starts%20at%20%24900,emissions%20years%202026%20and%20later

[4] Kermit the Frog, "It's not easy being Greene!" understood for at least 15 years, here: https://www.youtube.com/watch?v=51BQfPeSK8k

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But, as we've just discussed, the WEC calculation depends, in part, on whether the owner has facilities whose emissions are above the applicable waste emissions thresholds, and here, for Not-Too-Green, three of its four facilities exceed those applicable thresholds. If it then needed to pay a charge based just on those overages (or exceedances), Not-Too-Green would need to pay $1.2 million in 2024. Still likely enough of a charge for that company to consider early or additional mitigation investments.

However, your Agency's interpretation of the netting statutory language allows Not-Too-Greene to offset any of its overages by its *under-emissions* (for want of a better term). And so here, as you can also see in Graphic 2, while it retains three facilities that exceed the designated waste emission thresholds, it has one seemingly better performing (or underreporting!) facility that functions to zero out its total facility applicable emissions. And so, under EPA's proposed interpretation (cells in orange), Company Not-Too-Green also pays a charge of **absolutely nothing**. Even though Not-Too-Greene's total emissions far exceed those of Company Greene, and even though three of its four facilities emit methane substantially in excess of those of similarly situated Company Greene!

Facilities	Segment	Subpart W Methane (mt)	Throughput in MSCF	Intensity Threshold	Waste Emissions Threshold (mt)	Facility Applicable Emissions (mt)	WEC Applicable Emissions (mt)
1	Offshore Production	552.96	18,000,000	0.002	691.2	-138.2	0.0
2	Onshore Production	1,843.20	60,000,000	0.002	2304.0	-460.8	0.0
3	Onshore Production	2,334.72	76,000,000	0.002	2918.4	-583.7	0.0
4	Gathering & Boosting	1,075.20	140,000,000	0.0005	1344.0	-268.8	0.0
	Actual Total Emissions	**5,806.08**					
	A direct methane emissions charge (2024)	**$ 5,225,472.00**					
	Methane emissions over thresholds	**-**					
	A total methane over threshold charge (2024)	**$ -**					
	EPA Interpretation: 100% Offsetting WEC Applicable Emissions	**-**					
	EPA Proposed WEC (2024)	**$ -**					
Graphic 1: Oil and Gas Facilities Owned by Company Green							

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Facilities	Segment	Subpart W Methane (mt)	Throughput in MSCF	Intensity Threshold	Waste Emissions Threshold (mt)	Facility Applicable Emissions (mt)	CPRI Proposed
1	Offshore Production	900.0	18,000,000	0.002	691.2	208.8	208.8
2	Onshore Production	3,000.0	60,000,000	0.002	2304.0	696.0	696.0
3	Onshore Production	1,557.6	76,000,000	0.002	2918.4	-1360.8	-680.4
4	Gathering & Boosting	1,800.0	140,000,000	0.0005	1344.0	456.0	456.0
	Actual Total Emissions	**7,257.60**					
	A direct methane emissions charge of $900 per mt CH4 (2024)	**$6,531,840.00**					
	Methane emissions over thresholds	**1,360.80**					
	A total methane over threshold charge of $900 per mt CH4 (2024)	**$1,224,720.00**					
	EPA Interpretation: 100% Offsetting WEC Applicable Emissions	**0.00**					
	EPA Proposed WEC (2024)	**$ 0.00**					
	CPRI Proposed "accounting for" WEC Applicable Emissions	**680.40**					
	CPRI Proposed WEC (2024)	**$ 612,360.00**					

Graphic 2: Oil and Gas Facilities Owned by Company Not-Too-Greene

Is this type of absurd outcome congressionally mandated? That is, are these inequitable and truncated incentives really compelled by every reasonable reading of Clean Air Act §136(f)(4)?

Perhaps not, because in §136(f)(4) Congress clearly, in terms of "netting," had in mind not zeroing out a methane emitter's annual WEC, but rather merely "reducing [its] total obligation." (Emphasis added.)

Accordingly, Administrator Regan, we propose an alternative reading for your consideration. That is, where an owner of several WEC-eligible facilities has one or more of them with emissions that are lower than its calculated waste emission threshold, then those under-emissions may be used to offset only part of its other facilities' exceedances, on no greater than a 1:2 basis.

And so, as shown in the final two columns in Graphic 2, CPR initiative proposes a more reasonable reading, so that Not-Too-Greene may utilize, in light of the good performance of its second On-Shore Oil or Gas Production facility, only ½ of its calculated negative facility applicable emissions (that is, ½ of its -1360.8 mt methane emissions) to offset the total emissions it must use to calculate its 2024 waste emissions charge.

Thus, instead of owing absolutely nothing for 2024 for its waste methane emissions charge, Company Not-Too-Greene will still owe $612,000. Enough, perhaps, to keep the pressure on – so that it might retain an incentive to work a bit harder to be Greene.

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Respectfully submitted this 26th day of March 2024, by,

/s/ Dan Galpern
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