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These comments are filed on behalf of the Independent Petroleum Association of America (IPAA). IPAA represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be the most significantly affected by the actions resulting from this regulatory proposal. Independent producers drill about 91 percent of American oil and gas wells, produce 83 percent of American oil, and produce 90 percent of American natural gas.

The Environmental Protection Agency (EPA) has opened this comment center for the purpose of receiving comments on its legislatively imposed Methane Emissions Reduction Program (Methane Tax). EPA describes this program as follows:

> *EPA received $1.55 billion to reduce methane emissions from the oil and gas sector by providing financial assistance (grants, rebates, contracts, loans, and other activities) and technical assistance as well as implementing a statutorily required waste emissions charge. Eligible recipients for these funds include but are not limited to air pollution control agencies, other public or nonprofit private agencies, institutions, and organizations, and individuals. The program specifies that at least $700 million must be used for activities at marginal conventional wells. Section 60113 also requires EPA to implement a waste emission charge on methane emitted from applicable oil and gas facilities that emit over 25,000 metric tons of CO2e and that exceed statutorily specified waste emissions thresholds beginning in 2024. The waste emissions charge will start at $900 and increase to $1,500 per metric ton.*

The format for these comments is laid out in a series of questions. IPAA provides information on several of those questions.

However, before addressing individual issues, it is pertinent to address some overarching aspects of this program. While these questions largely address the distribution of various authorized funds for enumerated purposes, this program also authorizes EPA to use any authorized funds for the implementation of the program. The magnitude of these costs is currently unknown, but since it can include the development of emissions reporting tools, the auditing of all submissions of both emissions and taxes, the levying and collection of penalties and whatever else may fall under the scope of the program, these costs may be substantial.

Additionally, EPA is given the authority to "issue guidance or regulations as necessary to carry out this section." This is an important and significant authority that EPA must use judiciously. This program presents the worst situation for regulatory development: legislative language with no legislative history. There are no committee reports, no conference report, not even floor statements during the debate on the legislation. Significant terms in the provisions are not

defined. Now, EPA must issue clear and comprehensive regulations to assure that the program is carried out effectively and fairly.

QUESTIONS:

The questions below were the subject of a series of EPA listening sessions.

1. Which listed actions in the Methane Emissions Reduction Program should be prioritized for financial and technical assistance?

2. What methane mitigation technologies and practices should EPA prioritize for financial assistance to achieve near-term emission reductions?

3. What methane monitoring technologies and research should EPA prioritize for financial assistance to meet near-term monitoring needs?

Throughout the development of EPA methane regulations and the initiation of the methane tax under the IRA, the recurring issue that drives debate remains the quality of assessment of methane emissions. Current Leak Detection and Repair (LDAR) programs are based on periodic assessments of emissions. Ambient monitoring is a mix of fixed monitors, drive-by sampling and airborne sampling by airplanes, drones and satellites. Despite these extensive efforts, broad disagreement exists regarding the validity of the sampling in the context of relating to facility level emissions. Moreover, even where emissions of methane are detected, the data provides concentrations of methane in a vapor stream or the atmosphere. Converting this information into the mass of methane in the air requires assumptions and calculations that are complicated. Consequently, there remains a compelling need to develop accurate, cost-effective, readily available monitoring systems that can reliably provide emissions information to define the sources and solutions to address methane emissions.

Additionally, most studies conclude that the overwhelming majority of high emissions come from a small number of sources, typically a result of the failure of a piece of equipment. EPA's current LDAR programs hinge on the use of optical gas imaging (OGI) technology that is costly, cumbersome and difficult to use. There are emerging technologies that provide faster, more cost-effective sampling being used by facilities to identify problems more rapidly. The more of these technologies that can be developed and utilized, the better responses will be. Funding should be devoted to encouraging such technologies, but EPA needs to allow their use as an alternative to its outdated OGI requirements.

4. Are there areas of financial and technical assistance for methane mitigation from marginal conventional wells that should be prioritized?

This question needs some context before addressing its specific elements. Marginal wells are defined in the federal tax code. They are wells producing 15 barrels of oil equivalent per day or less. The gas equivalent of a barrel of oil is 6 mcf. Any combination of oil and gas (converted to

oil equivalents) at or below 15 barrels/day constitutes a marginal well. However, the average marginal oil well produces about 2.5 barrels/day and the average natural gas well about 22 mcfd. These wells are predominantly operated by small businesses.

These operators' relationship with EPA has been contentious at best. EPA, particularly the Office of Enforcement and Compliance Assurance (OECA), has a long history of targeting oil and natural gas production. OECA had created a specific compliance initiative, Ensuring Energy Extraction Activities Comply with Environmental Laws, that operated for several years. Following the promulgation of Subpart OOOO regulations that created requirements for managing oil and natural gas production storage tanks, OECA initiated an aggressive enforcement action in a state where it could directly act against individual producers. Using a strategy that interpreted the regulations differently than the EPA technical staff had described, OECA targeted smaller private producers threatening them with fines that would exceed the value of the company.

With this history, small producers may view any "financial and technical assistance" through EPA from this program as a conduit to provide OECA with materials to use in enforcement actions. Consequently, if EPA intends to be the grant manager for these forms of assistance, it first needs to develop a straightforward and clearly laid out process. This process needs to assure applicants that any information submitted or developed during the application or use of any federal assistance cannot and will not be used for any enforcement or compliance actions by the EPA or given to any other agency for their use in any enforcement or compliance action.

Additionally, EPA should seriously consider developing a relationship with the Department of Energy (DOE) to utilize its positive relationships with the oil and natural gas industry. DOE has worked with the industry for many years on positive research to improve production and manage environmental risks. For example, it works with the Petroleum Technology Transfer Council (PTTC) that is primarily structured to provide technology resources to small producers. PTTC or other pathways through DOE could be beneficial approaches to achieve the objective of the law.

Regarding the focus of assistance, EPA needs to first understand the nature of emissions from marginal wells. In 2022, DOE released a study that examined the nature and magnitude of emissions from marginal wells. Several key aspects of marginal well emissions were identified in the study. For example, the dominant volume of emissions resulted from a small number of sources. In further evaluating the predominant sources, they are overwhelmingly storage tanks (primarily open thief hatches), some improperly operating controllers, and equipment like open vents. These emissions sources are manageable through some mechanical repairs but primarily through effective maintenance and operating actions. When managed, the DOE study demonstrates that routine emissions are minimal, largely undetectable. Consequently, routine emissions from these operations can be controlled with limited investment and training in better regular maintenance.

A second theoretical emissions focus is potential flaring emissions. However, the magnitude of flared emissions from marginal wells is poorly defined. EPA's first action here should be to determine whether marginal well flaring emissions are of enough significance to address. Equally important, can they be cost effectively technically managed? Many marginal wells do not operate continuously making the concept of continuous flaring management unworkable. Historically, the capture of associated gas and cost effective routing of it to sales or recovery has eluded the industry when these small wells are located remotely at long distances from gas

gathering operations. Before EPA can provide technical or financial assistance for these operations, significant research is necessary.

For technical or financial support to be meaningful, it must be targeted to address real solutions to real problems. Currently, for marginal wells far too many policy options have been based on far too little actual information. For example, reports using information from the GHP Reporting Program produce calculations from the Emissions Factors (EF) in Subpart W that even EPA is prepared to revise. However, from the DOE Study, these emissions sources are far more limited in their impact than suggested by the GHR Reporting Program. EPA has been tasked with making the Subpart W EF more accurate and more empirically based. It has yet to act. The only short term changes may be related to the EPA 2022 proposal to revise various EF for the GHG Reporting Program. However, the proposed revisions there are minimal actions compared to the mandate in this program.

All these activities – creating an assistance program that does not pose enforcement threats, identifying the true emissions profile for marginal wells, correcting or developing tools to assess marginal well emissions – need to come together for true value to be provided.

5. Are there emerging monitoring and mitigation technologies that should be prioritized for financial assistance to support innovation and encourage methane emissions reduction efforts?

Monitoring technology that can be used easily and is less costly should be prioritized. Mitigation technologies need to be based on a better understanding of the emissions profiles of industry segments.

6. What kinds of technical assistance would be most valuable?

7. How can financial assistance be used to mitigate the health effects of methane and other greenhouse gas emissions in low-income and disadvantaged communities?

Conclusion

The issues raised in this query are significant and substantial, but they are not sufficient. The heart and the burden of this program revolves around the emissions tax. Four key elements of that program are: excluding small facilities from the program, the development of accurate Emissions Factors, the calculation of "excess" emissions, and the interaction with methane regulations under Subparts OOOOb and OOOOc.

As described above, defining financial and technical support hinges on targeting it to real emissions issues. Both Subpart W and this program are intended to be structured to limit or exclude their application to small facilities and small businesses. As currently structured, however, it is becoming apparent that this will not be the case. First, since exposure to the "excess" emissions taxes hinges on emissions exceeding 25,000 tons per year of carbon dioxide equivalents. This will raise issues regarding the calculation of that threshold. Most small facilities will fall under the threshold, but they will now be forced to prove it or risk OECA enforcement actions. Merely calculating the emissions can be expensive, but unless EPA develops some straightforward guidelines to allow for easy estimation of emissions, that cost will be mandated for these small businesses. Second, because the structure of Subpart W can aggregate hundreds of small wells to generate reports, this can result in exposure of these small

operations to the "excess" emissions taxes, particularly because some of the Subpart W EF are inaccurate and too high such as intermittent pneumatic controllers and others are based on limited data such as the gathering and boosting EF.

Because the nature of emissions from oil and natural gas production, transport and use will primarily relate to fugitive molecules from multiple pieces of equipment, even the most accurate monitoring systems will not provide mass emissions data. Consequently, emissions factors will remain a pivotal component of emissions estimates. The current emissions factors were never designed to provide the accuracy that the methane tax demands. EPA must initiate a thorough and high quality effort to develop new Subpart W EF. This process will take years rather than months to properly complete. EPA must begin now.

The "excess" emissions calculation process is first dependent on determining the tons of methane emissions from sources – a determination made by using Subpart W. Next, however, it depends for most of the categories on determining the tons of natural gas sold. Natural gas is a product comprised predominantly of methane but including other compounds. It differs by resource play although it may be similar by region. Historically, natural gas composition has not been continuously monitored. Consequently, EPA must develop an acceptable method to provide reasonable natural gas baseline compositions for use in the excess emissions calculations. While provisions need to be made for companies that can provide more detailed information on their operations, this process needs to be straightforward. And, as in other areas, it needs to be clear that it will not trigger audits by OECA.

The provisions of the law allowing for relief from the methane tax through compliance with regulations under Subpart OOOOb and OOOOc await their completion. Here, the timing of requirements under the methane tax are completely inconsistent with the Subpart OOOOb/OOOOc regulatory timeline. While Subpart OOOOb regulations will become effective when they are finalized, the Subpart OOOOc emissions guidelines produce regulations that are developed under a longer term regulatory schedule. The current proposal would require state plans to be submitted 18 months after the Subpart OOOOc emissions guidelines are finalized with compliance up to three years thereafter. The schedule results in state regulations being completed near the beginning of 2028. But, the tax becomes effective in 2025 based on 2024 Subpart W reports. Until then the compliance relief provisions are a false promise.

EPA needs to clarify to Congress that this law cannot be fairly implemented as written and needs to be revised.

IPAA appreciates the opportunity to submit these materials and believes that input from the industry is essential to develop an accurate and fairly administered methane tax. If IPAA can provide further information, please contact Dan Naatz at dnaatz@ipaa.org.

Sincerely,

Dan Naatz
Chief Operating Officer and
Executive Vice President