



March 26, 2024

U.S Environmental Protection Agency  
EPA Docket Center  
Air and Radiation Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: **Docket ID No. EPA-HQ-OAR-2023-0434** Waste Emissions Charge for Petroleum and Natural Gas Systems. Submitted via electronic mail at: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov) and [www.Regulations.gov](http://www.Regulations.gov).

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to submit comments regarding the above-referenced proposed rulemaking. The MSC was formed in 2008 and is currently comprised of approximately 140 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing, transmission and utilization, in the country, as well as the supply chain companies, contractors and professional service firms who work with the industry.

The MSC appreciates the opportunity to offer the following comments on the above-referenced proposed rule relating to Waste Emissions Charge for Petroleum and Natural Gas Systems (WEC). The member companies of the MSC are proud of their cumulative efforts to date to strengthen domestic energy production, meet the needs of America's citizens and businesses, enhance our nation's national security, all the while doing so in a manner that protects and enhances our shared environment. The work of our member companies and their colleagues throughout the natural gas development sector has led to a precipitous drop in criteria pollutant emissions that has significantly enhanced air quality in Pennsylvania and throughout our nation, while also contributing to historic reductions in carbon dioxide emissions from the electric power generation sector. Our members are also extremely proud of their commitment and performance in producing the natural gas supplies our nation depends upon in the most environmentally conscious manner found anywhere in the world.

## **Introduction**

The MSC offers its support for the public comments submitted by the American Petroleum Institute.

The MSC offers the following introductory comments and attaches specific comments to the proposed rulemaking for review and consideration by the U.S. Environmental Protection Agency (U.S. EPA).

### Natural Gas is Critical to Meeting the Energy and Environmental Progress Needs of the United States

Since 2005, Pennsylvania has risen to become the second largest natural gas producer in the nation, accounting for approximately 18% of the entire nation's production in 2023.<sup>1</sup> Pennsylvanians have benefited from this abundant and clean energy resource. Approximately 59% of the Commonwealth's electricity in 2023 was generated from natural gas, while approximately half of Pennsylvania homes are heated with natural gas.<sup>2</sup> These benefits extend far beyond the borders of Pennsylvania, as natural gas is transported to meet the needs of our nation throughout the eastern, southern and Midwest regions of the United States. In addition, Pennsylvania is the largest exporter of electricity in the United States, illustrating the significant role of and reliance on Pennsylvania that regional states have on its energy production.

From an environmental perspective, Pennsylvania has seen significant progress in reducing emissions from the electric power generation sector. This progress includes (since 2005):

- A decline in volatile organic compound (VOC) emissions of 40%.
- A decline in SO<sub>2</sub> and NO<sub>x</sub> emissions of 93% and 81%, respectively.
- A decline in carbon dioxide of 46%, far surpassing the goals laid out in the Paris Climate Agreement.

It is important to recognize that, unlike in other shale basins across the country, Pennsylvania's operators are exclusively producing natural gas. As such, they have every incentive to minimize any wasted emissions and to capture and enter into the market all of the natural gas produced.

Comprehensive and robust regulatory programs and new requirements, combined with continued operator innovations and efficiencies, have been implemented since the onset of significant unconventional natural gas development in Pennsylvania approximately 15 years ago. New and existing sources are covered by performance measures to identify and limit leaks, with well pads and midstream infrastructure operating under new and revised air quality general permits. Pennsylvania has compiled an inventory of emissions since 2012 and expanded the scope of participating facilities over the years.

It is also important for the U.S. EPA to recognize that natural gas development in the United States, and particularly in the Appalachian Basin, has some of the lowest methane intensity rates in the world. For example, the International Energy Agency recognizes that the U.S. methane intensity of 8 tons (per thousand tons of oil equivalent) is one of the lowest of major oil and natural gas producing countries in the world, lower than China (9), Russia (13), Venezuela (48)

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<sup>1</sup> U.S. Energy Information Administration – Marketed Natural Gas Production

<sup>2</sup> U.S. Energy Information Administration

and Libya (103). Here in the United States, the Appalachian Basin's methane intensity is the lowest of the nine major hydrocarbon producing basins in the entire country.<sup>3</sup>

Natural gas operators are rightfully proud of their contribution to reducing climate change inducing emissions. Operators have demonstrated this commitment through their voluntary participation in meaningful initiatives such as One Future, API's The Environmental Partnership, the U.S. EPA's Methane Challenge and the Global Methane Initiative, to name a few. Over 85% of MSC Board members participate in one or more of these initiatives.

### Integration of Waste Emissions Charge Rulemaking with Other Oil and Gas Rulemakings

As noted by the U.S. EPA in its Fact Sheet accompanying this rule, the "*WEC is designed to work together with EPA's Clean Air Act rules for oil and natural gas facilities, and with other provisions of the IRA, to incentivize and encourage reductions in harmful air pollution and waste from oil and natural gas operations.*"<sup>4</sup>

Despite this stated intent, and accompanying direction from the Congress within the Inflation Reduction Act with respect to integration of rulemakings, it has been difficult to comment on some sections of the proposed WEC rule that are intertwined with the other rulemakings.<sup>5</sup>

Promulgating these multiple rules in a more comprehensive and deliberative manner would have helped to clarify many of the issues included in comments received by U.S. EPA on the WEC. Additionally, it would have reduced regulatory overlap and inconsistencies within the rules, especially with respect to reporting and recordkeeping. Examples of this frustration in commenting include the required calculation methodology and references to the Subpart W rule, which is currently proposed and will likely be finalized with provisions that are unknown at this time, and the equivalency determination required for OOOOb and OOOOc, as proposed in November 2021 and recently published as final in the Federal Register, while this comment period (for WEC) was open.

In total these three rules and accompanying documentation exceed 4,000 pages. This volume does not reflect incorporated or referenced studies, manufacturers' information, or the suite of state regulatory changes that are being undertaken simultaneously with the federal rulemakings.

The U.S. EPA is strongly encouraged to take a holistic approach to these multiple rulemakings, with a particular focus on the perspective of the regulatory community, which is trying to review, provide feedback, implement and comply with such significant regulatory changes. The MSC requests unity and alignment between these rules, as several areas of misalignment will create additional reporting burdens (and costs) on operators. For example, the proposed reporting format for WEC is by owner and operator, whereas the Greenhouse Gas Reporting Program

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<sup>3</sup> Clean Air Task Force & Ceres: Benchmarking Methane & Other GHG Emissions (June 2021)

<sup>4</sup> U.S. EPA Fact Sheet: Proposed Rule – Waste Emissions Charge for Petroleum and Natural Gas Systems  
[https://www.epa.gov/system/files/documents/2024-01/wec\\_factsheet.pdf](https://www.epa.gov/system/files/documents/2024-01/wec_factsheet.pdf)

<sup>5</sup> These include Standards of Performance for New, Reconstructed, and modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (OOOOb/c), and the "Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems" (Subpart W) rules.

(GHGRP) is by parent company. The inconsistency in reporting formats will result in additional time needed to prepare reports and has the potential to increase the likelihood of errors in submissions.

#### Use of Empirical Data in Accordance with Inflation Reduction Act

The Clean Air Act (CAA) mandates the use of empirical data. The MSC stresses the importance of U.S. EPA addressing gaps in the GHGRP Subpart W where there are additional opportunities to allow for the use of empirical data. Addressing the ability to use empirical data for pneumatic controllers is one area where comments were provided in response to EPA's 2023 GHGRP proposal and the MSC requests that those comments be incorporated in the final GHGRP as required under the CAA.

#### Timing of Emissions Reporting and Remittance of Waste Emissions Charge

The MSC requests delays on both the initial reporting date as well as the specific date each year for subsequent reporting requirements. The rationale and specific proposals are included in the attached detailed comments.

Additionally, the MSC requests that any WEC payments due be remitted no sooner than 60 days after the applicable reporting deadline. The rationale for this recommended change is included in the attached detailed comments.

#### **Conclusion**

The MSC and its member companies take great pride in their efforts to conduct operations safely, efficiently, and in a manner that protects our shared environment and local communities, while at the same time meeting the critical energy needs of our citizens. We welcome the opportunity to discuss in greater detail any questions or need for clarification that you may have regarding our comments.

Sincerely,



David E. Callahan  
President

## SPECIFIC COMMENTS

The MSC offers the following specific comments for consideration:

### **Delay Initial Report Due Date**

The CAA states that revisions to Subpart W methodologies must be made to “allow owners and operators of applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator, to demonstrate the extent to which a charge under subsection (c) is owed.” The proposed GHGRP revisions allowing the use of empirical data under Subpart W do not become effective until RY 2025; thus, the MSC requests that the first WEC filing submission due date be updated to ensure the reporting years covered are in alignment.

If the initial WEC report due date remains for RY 2024, the MSC requests the ability to use empirical data, as required under CAA to calculate information required for the WEC filings, rather than being required to use Subpart W emission factors that do not rely on available empirical data.

### **Delay Reporting Date and Payment Timeline**

The proposed rule requires reporting and payment by March 31 for the preceding reporting year starting on March 31, 2025. The MSC has concerns regarding the feasibility of the WEC filing submission due date being on the same schedule as the GHGRP Subpart W. Because the WEC filing content requires calculations based on information reported under Subpart W, reporters will need time to prepare the WEC filing following the Subpart W due date of March 31. Additionally, the first quarter time period already requires significant environmental reporting, including state emission inventories (including PA), Title V inventories and compliance summaries, GHG reporting, PA state permit compliance reports (GP-5 and 5a), and some NSPS and NESHAP reporting.

Thus, the MSC proposes a reporting deadline of November 1st to avoid the burden of additional first quarter environmental regulatory reporting and to allow adequate time for preparation, review, and approval of emission fee calculations and payment preparation and submission.

Additionally, the proposed rule requires payment to be remitted at the same time as the annual reports are submitted. Because WEC payments potentially may be significant, time is needed after the submission of GHGRP reports to verify payment amount, obtain internal approvals, and arrange for payment. Therefore, the MSC requests that the timeframe for any emissions payment be moved to at least sixty (60) days after the reporting deadline. This will provide needed time for the operator to remit payment while minimizing any errors that may result from the currently compressed timeframe.

Rather than having an initial report deadline of March 31 and a resubmission deadline of November 1, the MSC requests the initial report deadline be moved to November 1 and the resubmission deadline be removed or moved to December 31. If the initial report deadline is November 1<sup>st</sup>, the e-GGRT validation process and Subpart W report revisions would already be

addressed, and this would significantly reduce or eliminate the cumbersome process of submitting revisions to WEC filings for the reporters and the potential issuing of a series of invoicing and/or refunds from U.S. EPA.

Should the initial WEC filing due date not be extended to November 1<sup>st</sup>, the MSC requests the due date for the WEC filing be extended at a minimum until after the e-GGRT validation process is complete. The MSC requests more transparency on the e-GGRT validation process and a set deadline on when reporters will receive validation messages to reduce the number of times a reporter may be required to submit revised WEC filings and eliminate the need for U.S. EPA to issue multiple invoices and refunds.

### **Reporting Format – Parent Company versus Operating Entity**

The WEC proposes a reporting obligation at the operating entity level, which conflicts with the GHGRP’s reporting obligation, which is imposed on the parent company. The proposed reporting format for WEC filings creates an additional burden on reporters, causing them to prepare reports in two formats. For consistency, the MSC requests that U.S. EPA make the appropriate revisions to the WEC to ensure the reporting format will align with the GHGRP and require reporting on the parent company level.

### **Regulatory Compliance Exemption**

The WEC provides a compliance exemption for those facilities which comply with OOOOb and OOOOc. The proposed WEC approach appears to greatly limit the ability of this exemption to be applied. For example:

- The proposed rule states that the regulatory compliance exemption would only be available if compliance with the requirements under the approved methane emission standards and plans pursuant to subsections (b) and (d) of section 111 “will result in equivalent or greater emission reductions as would be achieved by the [NSPS OOOOb/EG OOOOc 2021 Proposal], if such rule had been finalized.” As stated in U.S. EPA’s WEC fact sheet, the WEC was designed to work together with U.S. EPA’s CAA rules for oil and natural gas facilities, and with other provisions of the IRA, to incentivize and encourage reduction in harmful air pollution and waste from oil and natural gas operations. As such, the MSC asserts that U.S. EPA is required to base the WEC program on CAA rules and requests that the U.S. EPA accept the final OOOOb and EG OOOOc, effective May 7, 2024, as the equivalent standard, since the 2021 proposal has no regulatory standing for compliance.
- The EG OOOOc must be implemented, possibly in all states prior to it being considered in effect. The MSC agrees that the Congressional intent of the regulatory compliance exemption is intended to encourage methane reductions in the near term while state plans are being developed. However, the method that U.S. EPA is proposing, which requires all standards and plans to be in place in all states prior to use of the exemption does not incentivize reductions in the near term. Section 136(f)(6)(A)(i) of the CAA mandates



that emissions standards and plans must be approved and in effect in all states with respect to the applicable facilities. Based on this language, the MSC interprets “with respect to the applicable facilities” to mean that the plans must be approved and in effect in states where the applicable facility operates and would not be affected by the status in states that do not impact the applicable facility. As such, the compliance exemption should be evaluated on a state-by-state basis. Once the standards and plans have been approved in the state where the applicable facility operates, the U.S. EPA should allow the use of the compliance exemption for such facilities. Additionally, this approach would help companies with their budgeting for implementation since the determination process for all states including those that do not impact the applicable facilities, could take several years.

- Finally, the MSC requests that U.S. EPA allow for the use of the exemption for facilities demonstrating compliance with NSPS OOOOb for the full reporting year in which the rule becomes effective for ease of recordkeeping and reporting.

## **Compliance**

The U.S. EPA proposes that an affected facility will qualify for the compliance exemption only if it reports no deviations of any kind for any emissions source subject to the NSPS OOOOb and EG OOOOc. This is an unnecessarily high bar for maintaining the ability to qualify for the compliance exemption. Furthermore, some of the language in the proposed rule makes compliance challenging. For example, the term defect for a leaking emission component could be perceived as a deviation and eliminate the exemption for an affected facility. Maintaining zero leaks under a leak detection program is not feasible and it is not reasonable to revoke the ability to use the compliance exemption if the leak repair and resurvey requirements under NSPS OOOOb and EG OOOOc and being met.

Thus, the MSC requests that when evaluating compliance for exemption purposes, deviations should be a documented event identified through inspection or determined to be a reportable event to eliminate the ambiguity of a deviation. Furthermore, a deviation should not rise to the level of resulting in a compliance exemption revocation.

## **Plugged Well Exemption**

The WEC provides exemption for emissions from permanently shut-in and plugged wells. As proposed, the exempted emissions are limited to equipment leaks, liquids unloading, workovers with hydraulic fracturing, and workovers without hydraulic fracturing associated with each permanently shut-in and plugged well. The MSC requests that all categories associated with a plugged well be exempted. For emission sources dedicated to the plugged well alone (e.g., a storage tank), emissions can easily be attributed to the well. Furthermore, the act of plugging wells may result in emissions reported under Subpart W (e.g., the proposed large emission event category or blowdown emissions). If these emissions are subject to the WEC, there would be a disincentive to plug wells as this would add additional cost to well closure.



## **Netting**

The MSC requests the ability to apply netting to provide an incentive for operators to implement methane reduction projects or ensure early compliance with NSPS OOOOb and EG OOOOc.

### 25,000 Metric Tons of CO<sub>2</sub>e Threshold

As proposed, only facilities in excess of 25,000 metric tons of CO<sub>2</sub>e can be used for netting and the regulatory compliance exemption facilities also cannot be used for netting. Limiting how facilities are included has significant potential to reduce voluntary investment in methane reductions. For example, if an owner or operator makes improvements at a facility which results in the facility no longer being classified as a “WEC applicable facility,” the owner or operator gets no netting benefit for implementing those voluntary improvements.

To preserve the incentive to make improvements at facilities, the MSC proposes the ability to have the initial reporting year act as a baseline year where the “baseline” facilities could continue to be used for netting purposes in subsequent years even if the emissions drop below the 25,000 metric ton CO<sub>2</sub>e threshold. Additionally, the MSC requests the ability for operators to include facilities in netting if they can demonstrate that improvements at the facility have been implemented and resulted in emissions falling below the 25,000 metric ton CO<sub>2</sub>e threshold. The ability to net facilities where reductions have been implemented is consistent with the goals of both the IRA and the WEC rulemaking and promotes early compliance with NSPS OOOOb and EG OOOOc.

### Netting Facilities at the Parent Company Level

The proposed rule would require netting of facilities under each operating entity as opposed to netting at the parent company level. In its proposal, the U.S. EPA requests comment on whether netting at the parent company level is an appropriate alternative. The MSC believes that it is and requests that the U.S. EPA adopt this approach in its final WEC rulemaking. This approach is inconsistent with the GHGRP and the MSC requests alignment between the two programs. Netting should be based on the approach of using the parent company of a facility owner/operator.

## **Combustion Emissions**

Combustion emissions are proposed to be included in the WEC calculation when accessing facility waste emissions. Post-combustion methane emissions from external and internal combustion sources should be excluded as a “waste” emission. This is because they are not a waste, but rather the byproduct of an efficient and productive use. Unlike raw gas methane emissions associated with leaks and venting, these methane emissions are not able to be recovered and repurposed. In contrast to waste emissions, post-combustion methane emissions are from gas serving its purpose as a fuel that results in energy generation. The MSC recommends that combustion emissions be included under Subpart C and not included in WEC calculations as the WEC is intended for waste emissions. If revisions to Subpart W are outside





the scope of this rulemaking, the MSC requests that combustion emissions be excluded from the WEC calculation.

## Definitions

The MSC requests the definition of “owner” be revised from, “*facility owner or operator as of December 31 of the reporting year*” to “*facility owner or operator at the end of the reporting year.*” This revised definition has the same effect but eliminates ambiguity for any ownership changes on December 31 so that the new owner is unambiguously responsible for the WEC.

## Energy Production as Denominator

It is important that U.S. EPA review the intent of Congress when making any determination on the calculation method. We believe that the work done by Ceres and MJ Bradley in the annual Benchmarking Methane and Other GHG Emissions informed Congress when it selected the waste emission thresholds. When calculating methane intensity, the quantity of methane emissions in the numerator should reflect the total methane emissions attributable to the quantity of natural gas sent for sale as represented in the denominator. MJ Bradley (now ERM) adopted the Natural Gas Sustainability Initiative (NGSI) protocol on an energy allocation basis by multiplying the methane emissions by a gas ratio, which is defined as the energy content of the produced gas divided by the energy content of total hydrocarbons. This is consistent with practices in the life cycle assessment (LCA) community as illustrated in the implementation of the California Low Carbon Fuel Standard (LCFS) or renewable fuel standard for transportation fuels.

Allen and coworkers (*Allen, David T.; Chen, Qining; Dunn, Jennifer B. “Consistent Metrics Needed for Quantifying Methane Emissions from Upstream Oil and Gas Operations.” Environ. Sci. Technol. Lett., 2021, 8, 4, 345-349*) illustrated the importance of including emissions allocation on an energy basis, even within a single basin. Allen evaluated the Eagle Ford Shale across 12 subregions, ranging from primarily oil production to primarily dry gas production. When energy allocation is considered, similar methane intensities are observed across all subregions, but when all emissions are attributed solely to the natural gas portion of production (as is inherent in a metric lacking product allocation), the oil producing regions were significantly disadvantaged by as much as an order of magnitude with an unallocated methane intensity metric. This result is because without energy allocation, the methane associated with the total fluids production is included (methane associated with oil AND gas production) but only the gas portion of the total produced and sold fluids is used to normalize those emissions into an intensity.

Congress established differing metrics for facilities generating natural gas for sale compared to facilities principally generating oil for sale when they said that “the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed 0.20 percent of natural gas sent to sale from such facility; or 10 metric tons of methane per million barrels of oil sent to sale from such a facility, if such facility sent no natural gas to sale.” We believe these words should be interpreted to mean that Congress understands that methane emissions can be generated from natural gas production and, can also be generated from



oil production. Therefore, methane emissions are not solely attributable to natural gas production.

Given that there are a range of facilities that produce varying combinations of natural gas and oil, in addition to facilities that produce and sell exclusively one or the other, implementation of the IRA through regulation should also include a methodology to adjust for the type of facility. Industry benchmarking efforts, such as the very well-established MJ Bradley Report has generally done this with an energy allocation metric, such as with the gas ratio in the NGSI protocol.

Lastly, without a metric that accommodates the differences in operating characteristics, facilities could be incentivized to waste gas, by combusting it, or use it for other purposes onsite such as generation of power.

