

Summary of AXPC Concerns with EPA OOOOb/c Proposed Rule

February 2023

AXPC companies are focused on reducing methane emissions from their operations and support effective and reasonable regulation of methane that balances the essential value of US oil and natural gas production with the global challenge of addressing climate change. AXPC continues to have several significant concerns with EPA's supplemental proposal to regulate emissions from new and existing oil and gas facilities; and we are committed to working with EPA to address these concerns in order to finalize a workable and durable regulation that creates regulatory certainty and allows for domestic producers to provide America and the world with affordable and reliable energy.

Background

On December 6, 2022, EPA published a supplemental regulatory proposal in its ongoing rulemaking under Section 111(b) and (d) of the Clean Air Act (CAA), to revise the New Source Performance Standards (NSPS) for methane and volatile organic compound (VOCs) emissions from new oil and gas facilities (to include pipelines), and to establish the first-ever Emissions Guidelines for Existing Sources for methane emissions from existing facilities. The public was given until February 13, 2023, to provide comments and input on this substantial and complicated proposal that included thousands of pages to review and regulatory text that was over 500 pages itself.

If left unchanged, EPA's rule will:

- **Reduce domestic production, which will increase costs to households.**
- **Disincentivize new emissions-reductions technologies that have been more effective at finding bigger leaks faster, so operators can address them.**
- **Irresponsibly and unlawfully delegate EPA enforcement powers to private third parties.**
- **Not be readily feasible due to the lack of recognition of significant supply chain constraints and other real-world limitations.**
- **Treat new and existing sources virtually identical and subject some sources to multiple layers of regulation.**
- **Overlap, and in some cases, conflict, with other regulatory mandates, compounding compliance costs and burdens.**

Reduce domestic energy production:

EPA acknowledges that its proposed methane rule will have negative impacts on oil and natural gas production, resulting in a significant adverse impact to American energy production. If the rule is finalized, EPA estimates that the United States in 2026 will produce almost *21 fewer million barrels of oil and 258 million fewer Mcf* (thousand cubic feet) of natural gas a year. Additionally, by EPA's estimates, the rule will impose over \$14 billion in compliance costs; *it is one of the most expensive federal regulations of all time*. If the flaws in the rule are not addressed, it will drive up energy costs for American families and businesses and impede our ability to support our allies abroad.

Disincentivize new technologies:

The oil and natural gas industry proactively invests millions of dollars in new technology to reduce emissions and produce cleaner energy. EPA regulations have historically struggled to keep up with innovations; as the U.S. Government Accountability Office stated, "the EPA Administrator should provide greater flexibility to operators for using alternative technologies to detect methane emissions."ⁱ While EPA's stated intent is to enable new technologies, the Agency's proposed rule includes onerous requirements that will *actually discourage* their use, which could undermine industry's efforts to accelerate emission reductions. EPA should modify their alternative leak detection program in a manner that ensures that a range of technologies can be economically used now and that new technologies that become available can also be utilized.

To do this, EPA's program must be structured so that beneficial use of accepted alternatives is not then unduly burdened by excessive and unnecessary requirements, undermining their attractiveness as a more efficient alternative.

Outsourcing enforcement to private parties:

EPA's proposal includes a "super-emitter" program that has a novel, legally dubious, and problematic provision. The Agency proposes that it will "deputize" private entities, such as activist NGO groups, to report "super-emitter" events and require follow up action without any involvement or data verification on EPA's part – including whether these emissions were allowed by EPA in the first place. These unvetted third-party accusations will be publicly visible, and companies will be forced to quickly undertake investigations and post public responses. There is no clear authority expressed in the Clean Air Act that the EPA can outsource its enforcement authority, but it is very clear that this approach, if adopted, will create serious practical, technical, and legal problems, both for industry and the Agency.

Supply change challenges:

The global supply chain crisis has impacted the entire economy, including the oil and gas industry. As a result, the industry faces difficulties in obtaining the required environmental control equipment within the aggressive timeframes EPA has proposed. The Agency should study the consequences of the global supply chain crisis to properly understand its impact on the industry before finalizing the rule. To do otherwise would risk imposing a final rule that industry cannot readily comply with and exacerbate existing challenges to the implementation of state program revisions underway.

New and existing sources treated virtually identically; many sources will be subject to multiple pancaked layers of regulation with no benefit:

EPA has ignored what Congress established in the Clean Air Act: that is, the differentiation of new and existing sources, along with added flexibility for states to consider the remaining useful life of the facility. The proposed rule as written would force states to require essentially the same requirements for an oil and gas well built 30 years ago and owned by a small business to a brand-new facility built by a multi-billion-dollar corporation.

In addition, EPA's approach will result in many legacy sources being deemed "new" under prior regulations and "existing" under the new regulation. This means that EPA's proposal would subject oil and natural gas sources to new requirements, including those that just installed new equipment to meet existing regulations. This pancaking of requirements serves no environmental purpose, and the precedent reduces the incentive for companies to take action ahead of regulations.

Overlap, and in some cases, conflict, with other regulatory mandates, compounding compliance costs and burdens:

The Biden Administration, through regulations from EPA, the US Department of the Interior (DOI), and other agencies, has imposed and proposed significant, cumulative economic burdens on oil and gas producers. The complexities of so many of these overlapping actions occurring in a relatively short period of time makes it extremely difficult for either the public or the administration to understand the impacts or costs of compliance. These regulations are in addition to the new methane tax passed in the Inflation Reduction Act, for which EPA is also developing program implementation regulations.

Oil and gas producers facing these complex and technical mandates have not been granted sufficient time to understand the impacts on their operations. Moreover, these myriad regulatory provisions can conflict with each other, so that businesses complying with one rule can find themselves, through no fault of their own, undermine another one.

More time is needed for EPA and the public to understand the potential consequences of the proposed rule as it interacts with other concurrent rulemaking efforts. In particular, EPA and DOI will need adequate time to coordinate their respective proposals so they can finalize and implement feasible and cost-effective rules that work in concert without duplicating or contradicting each other.

ⁱ https://www.gao.gov/products/gao-22-104759#summary_recommend