January 23, 2025

Sent via email

The Hon. James Payne
Acting Administrator
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue NW
Washington, DC 20004

Re: EPA Policy Recommendations on behalf of AXPC

Dear Acting Administrator Payne:

I am writing on behalf of the American Exploration & Production Council (AXPC) to present our key priorities and actionable recommendations for the Environmental Protection Agency (EPA). These recommendations aim to support responsible energy production in the United States in alignment with the Trump administration's goal to "Unleash American Energy" and foster economic growth while also maintaining crucial environmental protections.

AXPC is a national trade association which represents the nation's leading independent oil and gas producers, who collectively contribute more than 50% of America's oil and natural gas production annually. Over the past two decades, our member companies have led the American Energy Revolution, fundamentally reshaping global energy markets and establishing the United States as the world leader in both oil and natural gas production, while simultaneously achieving significant emission reductions.

We urge the administration to build upon this progress by implementing regulatory frameworks that enhance U.S. energy production while upholding high environmental standards. Our recommendations focus on policy priorities that we believe strike this critical balance and directly impact responsible onshore exploration, development, and production of oil and natural gas in the United States.

Recommendations Policy Actions for the EPA

1. **Revise New Source Performance Standards (Subpart OOOOb/OOOOc)**
   Grant AXPC's reconsideration requests for certain provisions that have present compliance and feasibility challenges, especially to:

   - **Improve Feasibility for Emission Controls:** The rule's demonstration and monitoring requirements are either technically infeasible, unnecessary, or economically unreasonable and must be revised.

   - **Provide Greater Allowance for Alternative Technologies and Approaches:** The rule does not reflect the capabilities of alternative technologies and approaches; several provisions actually serve as a disincentive to their use.

   - **Clarify "Modification" Definitions:** The rule's definition of "modification" should reflect Congressional intent, capturing only non-routine, capital-intensive overhauls rather than minor changes.

   - **Provide States with Broad Flexibility:** States have raised serious concerns about provisions that are neither feasible nor justified, undermine state programs and are likely to lead to an increase in orphan wells.

   - **Reassess the Super-Emitter Program:** Third-party monitoring without operator collaboration presents a host of challenges in a regulatory structure and should be reconsidered and strengthened to prevent harassment.

2. **Modify Greenhouse Gas Reporting Rule (Subpart W):** Grant AXPC's reconsideration requests for certain provisions that limit the use of empirical data or undermine the potential for more accurate emissions reporting. This should include but is not limited to revising control device destruction efficiency tiers to reflect realistic and empirically observed performance as well as industry-validated standards.

   - **Incorporate Empirical Data:** Broaden the use of empirical data for emission factor calculations to improve accuracy without undue burden.

   - **Support Alternative Technology Integration:** Streamline approval pathways for new emission measurement technologies and approaches.

3. **Strengthen the Global Competitiveness of U.S. Oil and Gas:** Promote confidence in the U.S. GHG inventory (Subpart W), showcasing reliable, transparent emissions data that highlights the U.S. industry's global leadership in clean and responsible production practices.

4. **Address the Waste Emissions Charge (WEC):** The methane tax was designed to penalize American oil and gas production rather than to incentivize progress on emission reduction. The tax will lead to less energy security and higher energy prices for American families and businesses and should be repealed. EPA should support Congressional efforts to repeal the punitive tax; absent a legislative repeal of the methane fee, EPA's Waste Emissions Charge implementing rule should be revised to correct regional inequities by utilizing recognized energy allocation methodologies rather than EPA's current approach which penalizes regions that produce mostly oil. Additionally, EPA's exemption framework for the regulatory exemption framework must be revised to be realistically achievable in alignment with Congressional intent.

5. **Reform Clean Water Act (CWA) Section 401 Certification Processes:** Ensure certifications are required only for federally licensed activities that result in discharges into "waters of the United States." Timelines should be streamlined by requiring reviews to be completed within a maximum of one year and base conditions solely on direct impacts to water quality standards. EPA should also address well-documented abuses of certification processes that unnecessarily stall energy and infrastructure development and prevent such delays.

6. **Streamline Nationwide Permitting (NWP) under CWA Section 404(e):** Assure the long-term viability of existing NWPs: NWPs are essential efficiencies for critical energy and infrastructure projects that allow protective conditions on a range of minimally impactful activities so common that agencies could not otherwise manage through individual permits. Because of their importance, the 59 existing NWPs should be renewed, and their long-term viability and consistent availability should be protected.

7. **Revise "Adjacent" and "Relatively Permanent" Definitions in the 2023 WOTUS Rule**: In light of the Supreme Court's decision in *Sackett v. EPA*, the EPA should revise the definitions of "adjacent" and "relatively permanent" in the 2023 WOTUS rule to ensure clarity and alignment with the Court's guidance. The revised definitions should limit "adjacent" to wetlands with direct surface connections to navigable waters and define "relatively permanent" as waters with continuous flow or standing water for a significant portion of the year. These changes will provide regulatory certainty, reduce legal ambiguity, and ensure compliance with the Clean Water Act.

8. **Explore Opportunities for Greater Beneficial Use of Treated Wastewater:** The EPA should promote research and policy development to advance potential opportunities for greater beneficial use of produced water from oil and gas operations. It is critical to ensure that EPA's ongoing Effluent Limitations Guidelines (ELG) study under Subpart E does not overreach Subpart C regulations. EPA should explore opportunities to support potential for science-based policies and encourage innovative treatment technologies to safely repurpose produced water for agricultural, industrial, and environmental applications, enhancing water sustainability in resource-limited areas.

9. **Reform EPA Enforcement Strategies:** Replace EPA's punitive, fine-centric enforcement approach with one that prioritizes compliance assistance and tangible environmental improvements.

    - **Shift Agency Focus to Growing Compliance:** Under a compliance assurance approach, EPA would provide open opportunity for discussion on interpretation, consider alternate viewpoints, and provide ample time and opportunity for companies to take action before initiating enforcement.

    - **Stop Practice of Regulation by Enforcement in EPA Regions**: Regions have been undertaking regulation by enforcement impacting a range of oil and gas operations – from upstream to downstream. Those are evidenced by consent decrees addressing regulations related to NSPS OOOO, NSPS VVa, NSPS QQQ, BWON, and more. This practice should be curtailed to prevent precedent/policy setting actions inconsistent with the new administration's priorities.

10. **Recognize Expertise and Restore Coordination with State Ground Water Regulators:** In most instances the greatest experience, knowledge, and information necessary to most effectively regulate oil and natural gas development resides with state regulatory agencies, who better understand regional and local conditions and how to tailor regulations to fit those conditions and best practices. EPA should embrace opportunities to grow coordination with state regulators and recognize state expertise.

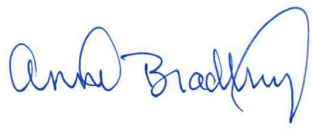
    - **Renew MOUs and Task Forces:** Restore and/or renew Memorandums of Understanding (MOUs) with key state regulatory organizations, such as the Interstate Oil and Gas Compact Commission (IOGCC) and the Groundwater Protection Council (GWPC), for regular coordination meetings involving EPA and state representatives to address shared challenges and foster collaboration on policy solutions.

- **Reaffirm State Program Adequacy:** Fulfill EPA's triennial review obligations under Subtitle D of the Resource Conservation and Recovery Act (RCRA) while reaffirming the adequacy of state regulatory programs for managing oil and natural gas production wastes. Partner with state regulators to document and highlight their programs' effectiveness under Subtitle D.

We urge the EPA to consider these policy actions and recommendation to ensure a robust regulatory environment that balances environmental stewardship with the dual goal of U.S. energy dominance. While these recommendations represent our primary concerns, we acknowledge there are numerous other policies and regulatory measures that impact U.S. energy production. We encourage ongoing collaboration with other stakeholders for a comprehensive understanding of these interconnected issues.

AXPC remains committed to working collaboratively with EPA to advance policies that promote responsible energy development while supporting our nation's economic and environmental objectives. Should you have any questions about these recommendations or if we can be of assistance, please do not hesitate to contact my senior policy staff Wendy Kirchoff at wendy.kirchoff@axpc.org. We appreciate your consideration of these priorities and look forward to engaging with EPA to achieve our shared goals.

Sincerely,



CEO
American Exploration & Production Council (AXPC)

Cc: EPA Administrator Nominee Lee Zeldin
EPA Deputy Administrator Nominee David Fotouhi