January 17, 2025

Via E-Mail

U.S. Environmental Protection Agency
EPA Docket Center
Attention: Docket ID No. EPA-HQ-OAR-2023-0234
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Petition for Reconsideration and Request for Administrative Stay of EPA's Final Rule: "Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions"

Dear Administrator Regan,

GPA Midstream Association ("GPA Midstream" or "GPA") hereby submits the attached Petition for Reconsideration and Request for Administrative Stay of the U.S. Environmental Protection Agency's ("EPA") Final Rule "Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions." 89 Fed. Reg. 91,094 (Nov. 18, 2024) ("Final Rule").

GPA Midstream has served the U.S. energy industry since 1921 and represents over 50 domestic corporate members that directly employ 57,000 employees that are engaged in the gathering, transportation, processing, treating, storage, and marketing of natural gas, natural gas liquids, crude oil and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 400,000 jobs across the U.S. economy. In 2023, GPA Midstream members operated over 250,000 miles of gas gathering pipelines, gathered over 91 billion cubic feet per day of natural gas, and operated over 365 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

Since the initial development of the Greenhouse Gas Reporting Program ("GHGRP") in 2009, GPA has participated in every rulemaking related to Subpart C "General Stationary Fuel Combustion Sources" and

GPA Midstream Association
Sixty Sixty American Plaza, Suite 700
Tulsa, Oklahoma 74135
(918) 493-3872

Subpart W "Petroleum and Natural Gas Systems." As explained in the accompanying Petition, the Final Rule raises several new issues on which it was impossible for GPA to comment during the public comment period for this rulemaking.

These issues raise important legal and policy questions, including the consistency of the Final Rule with the Clean Air Act, as amended by the Inflation Reduction Act ("IRA"), and new requirements to implement the Waste Emission Charge provisions of the IRA, all of which will have significant impacts on GPA members. Accordingly, GPA requests that EPA grant reconsideration and initiate new rulemaking proceedings to address the issues raised in the Petition and request for administrative stay.

We hope EPA finds the enclosed information useful. GPA welcomes the opportunity to continue discussions with the Agency as it develops its revisions to the waste emissions charge.

Respectfully submitted,

Andrew Mooney
Director of Government Affairs
GPA Midstream Association
505 9th Street, NW, Suite 602
Washington, DC 20004
amooney@gpamidstream.org
Cell: 903-815-4727

Cc: Jennifer Bohman, Climate Change Division, Office of Atmospheric Programs

Petition for Reconsideration and Request for Administrative Stay of the Final Waste Emissions Charge

January 2025

Contents

Introduction

On November 18, 2024, the U.S. Environmental Protection Agency ("EPA") published in the Federal Register a Final Rule titled "Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions."[1] The Final Rule implements an amendment to the Clean Air Act ("CAA") made by the Inflation Reduction Act ("IRA") to require that EPA "impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold . . . from an owner or operator of an applicable facility that reports emissions of more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases ("GHGs") pursuant to Subpart W of EPA's GHG Reporting Rule.[2] This is referred to as the Waste Emissions Charge, or "WEC."

GPA Midstream Association ("GPA") supports the repeal of the WEC and appropriate revisions to section 136 of the CAA, as added by the IRA. Repeal of the WEC is warranted because the waste fee thresholds contained in the statute are not appropriate for the midstream sector, and they are not equitable across and within industry segments.[3]

If implementation of the WEC moves forward, however, there are aspects of the Final Rule that properly interpret section 136 and that GPA supports. Accordingly, should the WEC remain in place, GPA supports retention of the following aspects of the Final Rule:

- Availability of netting at the parent company level;
- Movement of fee payment deadlines;
- Language at 40 CFR 99.21 that, for a WEC applicable facility for which the waste emissions threshold is zero, the total facility applicable emissions (*i.e.*, the methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions) and the WEC applicable emissions (*i.e.*, the methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility after consideration of any applicable exemptions) are both zero;
- "All-in" approach to regulatory compliance exemption (all methane emissions are exempt from the fee if the regulatory compliance exemption applies);
- Availability of the regulatory compliance exemption on a state-by-state basis;
- Narrowing of non-compliance for regulatory compliance exemptions to: monitoring requirements, emissions limits or standards (or surrogate standards), operational limits (including operating parameter limits), or work practice standards, and any determination of a violation in an administrative or judicial action;
- Application of the regulatory compliance exemption to the site-level for basin reporters;
- Quarterly assessment of the regulatory compliance exemption;
- Exclusion of the designated representative's name and contact information from the WEC filing;

[1] 89 Fed. Reg. 91,094 (Nov. 18, 2024) ("Final Rule").

[2] *See* 42 U.S.C. § 7436(c); CAA § 136.

[3] *See* 42 U.S.C. § 7436 (f)(1)(A), (f)(2), (f)(3); CAA § 136(f)(1)(A), (f)(2), (f)(3) (specifying different allowed methane emission thresholds for different industry segments. Additionally, these thresholds do not account for inherent differences within the same industry segment that would impact emissions level per the same volume of throughput such as low-pressure versus high-pressure basins).

- Allowing election to claim the regulatory compliance exemption instead of requiring certification of compliance within the WEC filing.

Revisions to the Final Rule are nevertheless necessary to ensure the WEC is implemented in line with congressional intent. Accordingly, GPA seeks administrative reconsideration of the Final Rule to address the following issues:

- Combustion emissions should be excluded from the waste fee assessment; EPA should expand the availability of netting to ensure that the netting provisions of the CAA are given full effect. This includes netting of petroleum and natural gas facilities with ≤ 25,000 Subpart W mt CO_2e.
- The regulatory compliance exemption should be available for each site as soon as it meets all applicable OOOOb and OOOOc requirements, not when the last compliance deadline has passed in a State.
- The correction to potential double-counting of combustion-related large release events should be made in Subpart W, not the WEC Final Rule.
- The Final Rule should clarify that only significant deviations or violations should result in penalties;
- Third-party audits were not contemplated by Congress and as such should be subject to reasonable standards or eliminated;

To provide EPA with the time needed to revise the Final Rule, and to react to any potential amendments to section 136 of the CAA which may be forthcoming, GPA also requests that EPA stay the Final Rule pending its reconsideration or, if petitions for review challenging the Final Rule are filed, pending judicial review.

In addition, the Final Rule implementing the WEC is the last of several interrelated rules affecting the midstream oil and gas sector. Those interrelated rules also include Subpart W, as amended, and EPA's new source performance standards ("NSPS") and emissions guidelines for existing sources regulating greenhouse gases ("GHGs") and volatile organic compounds ("VOCs") emissions for the Crude Oil and Natural Gas source category, codified at part 60, subpart OOOOb and OOOOc. Regardless of whether methane fees are implemented pursuant to the WEC, changes to Subpart W and OOOOb/c are needed, and we look forward to working with EPA on those outstanding issues.

Further, now that all of these interrelated rules are final, GPA has identified additional issues that must be resolved in Subpart W. GPA plans to submit a supplemental petition for reconsideration of EPA's Subpart W rules.

Issues Supporting Reconsideration of the Final Rule to Implement the WEC

Combustion: Methane Emissions Resulting from Stationary Combustion Are Not Waste Emissions and Should Not Be Subject to the WEC.

GPA disagrees with the EPA on categorization of combustion emissions as "waste emissions" under the WEC rules and subject to the WEC. Emissions resulting from normal operation of equipment performing a beneficial function should not be treated as waste and penalized under the WEC. As GPA argued in its

comments on the WEC, the most effective way to address this issue to report emissions resulting from combustion under Subpart C rather than Subpart W.

EPA's justification for leaving combustion emissions under Subpart W is flawed. In response to comments, EPA states "Congress made clear reference to methane emissions in stating the emissions subject to charge and did not include an exclusion or provide direction to exclude some portion of methane emissions that are reported to subpart W."[4] While Congress mentions refers to methane emissions, facts have changed significantly since the passage of the IRA, making reference to the relevant context especially important in clarifying the intent behind this provision. At the time the IRA was enacted, the quantity of methane slip (uncombusted natural gas) from engines was not widely understood and the GHGRP emission factors in place resulted in very minimal methane slip emissions being reported. While we agree that Congress directed the EPA to improve Subpart W reporting, Congress could not have known that action would lead to engine emission factors increasing by ***at least 45 times and up to 658 times higher***[5] than the previous emission factors. Congress could not have known the extent to which the Subpart W changes would affect emission totals from reporters and reasonable waste fee thresholds. It would therefore be unreasonable to conclude that Congress intended to drastically increase the emission factors while nevertheless expecting industry to be able to then reduce emissions below the fee thresholds established using data from the old reporting requirements. Accordingly, it is more consistent with congressional intent to revise Subpart W , moving combustion-related emission to Subpart C, to maintain the policy that is codified in the fee thresholds Congress established.

EPA also claims:

> Although stationary combustion of natural gas may be a beneficial use of natural gas (as opposed to venting or flaring), the methane emissions that result from stationary combustion are due to inefficiencies such as methane slip, which occurs when methane in fuel gas is not combusted and converted to carbon dioxide and is therefore not generating useful mechanical energy. Therefore, those methane emissions that would be reported under subpart W of the GHGRP for stationary combustion were not beneficially used.

This response ignores thermodynamic limitations that prevent perfect combustion in the real world. The second law of thermodynamics dictates that energy transformations always result in some loss, primarily as heat, which reduces efficiency. The finite time for combustion, heat losses to the environment, and variations in fuel composition all contribute to incomplete combustion. These factors make it impossible to achieve perfect combustion, even with advanced technology. Currently, there is not widely available

[4] EPA, Summary of Public Comments and Responses for Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions at 23 ("Response to Comments Document").

[5] Table W-7 to Subpart Part 98-Default Methane Emission Factors for Internal Combustion Equipment in the revised rule as compared to Table C-2 to Subpart C of Part 98—Default CH4 and N2O Emission Factors for Various Types of Fuel.

(let alone cost-effective) technology that can eliminate methane emissions during or after the fuel combustion processes.

To address the longstanding issue of combustion emissions being arbitrarily reported under Subpart W for some industry segments along with appropriately applying the methane fee only to waste emissions, the best solution would be to move these stationary fuel combustion emissions to 40 CFR Part 98, Subpart C. Barring that, EPA should define the term "waste emissions" as follows:

> *Any emission of methane that results from leaking, venting, or flaring. Emissions resulting from the combustion of fuel for beneficial use (such as an engine or process heater) are not deemed waste emissions.*

EPA has a long track record of distinguishing between emissions resulting from beneficial use and waste emissions. The EPA should not abandon its approach under this rulemaking and follow the precedent it has established, as GPA explained in its comments on the proposed WEC rule, and as summarized below:

- In both the current and proposed Subpart W, the definition of "internal combustion" includes explanation that "combustion of a fuel" generates "useful mechanical energy." This energy, applied in many types of equipment, clearly performs a beneficial use and function. Conversely, the definition of "vented emissions" specifically excludes stationary combustion flue gas. Further, the definition of "flare" is limited to combustion of "waste gases without energy recovery."[6]
- EPA previously acknowledged and repeatedly made the distinction between waste emissions and total emissions in its preamble to the 2023 Subpart W Proposal.[7]
- The text of CAA section 136 calls for delineating between waste and beneficial emissions. Specifically, section 136(a)(3)(B) distinguishes between emissions that result from beneficial use and waste emissions, as it provides funding for "improving and deploying industrial equipment and processes that reduce methane and other greenhouse gas emissions and waste."[8] Section 136(a)(3)(C) also makes this distinction, providing funding for "supporting innovation in reducing methane and other greenhouse gas emissions and waste from petroleum and natural gas systems."[9]
- Any argument that the industry segment-specific methane intensity thresholds established in CAA 136(f) (i.e., 0.05 percent for onshore natural gas processing and onshore petroleum and natural gas gathering and boosting) properly distinguishes between total methane emission and "waste emissions" is disingenuous or misguided. While it is unclear what basis was used by Congress in setting the statutory thresholds, it is a fact that those thresholds could only be based on data that existed at the time the IRA was developed, and the stationary combustion methane emissions were vastly undercounted in existing datasets due to the EPA emission factors that were in place when the IRA was enacted. In responding to its congressional mandate to revise Subpart W to ensure that the reporting and calculation of charges are based on empirical data, EPA must also recognize it is

[6] 40 C.F.R. § 98.233.
[7] *See, e.g.*, 88 Fed. Reg. at 50,286 (noting CAA section 136 requires Subpart W "accurately reflect the total [methane] emissions *and waste emissions* from the applicable facilities"); *id*. at 50,288 (noting proposed revisions to Subpart W "would ensure that the reporting under subpart W accurately reflects the total [methane] emissions *and waste emissions* as required by CAA section 136(h)") (emphases added).
[8] CAA § 136(a)(3)(B); 42 U.S.C. § 7436(a)(3)(B).
[9] *Id*. § 136(a)(3)(C); 42 U.S.C. § 7436(a)(3)(C).

potentially moving the goalposts that Congress set with the thresholds by adding sources to Subpart W and significantly increasing the emissions reported by sources that are currently reported under Subpart W.

- State gas capture programs, such as those in New Mexico[10] and North Dakota,[11] recognize the distinction between waste emissions and total emissions and deem gas used for combustion as beneficial use. These state gas capture programs do not count fuel gas or fuel gas combustion products against gas capture target requirements and certainly do not deem it waste.
- Consideration must also be given to the implications of the potentially conflicting regulatory drivers of reducing criteria pollutant emissions, such as nitrogen oxides ("NOx") and carbon monoxide ("CO") while also reducing the methane fee obligation. For example, if methane slip from internal combustion engines is subject to the WEC, the resulting increased cost of lower NOx technology may not be feasible due to the inverse NOx and GHG emissions relationship. Recognizing that internal combustion sources provide beneficial use and excluding those emissions from the WEC allows states and operators flexibility in attaining regional air quality priorities. Subsections (b) and (d) of Section 111 do not even contemplate any best system of emission reduction to mitigate these emissions.

GPA believes that combustion emissions should not be considered "waste" emissions subject to the WEC.EPA should address this by moving combustion emissions to reporting under Subpart C or otherwise develop a definition and appropriate regulatory text to exclude these emissions from the WEC.

Combustion: EPA Must Address the Potential to Double Count Combustion Emissions under OLRE in Subpart W, Not in the WEC

GPA appreciates EPA's attempt to fix the Subpart W other large releases event ("OLRE") issue wherein combustion emissions can be double-counted as most OLREs and combustion emissions, which GPA raised in our petition for reconsideration on Subpart W.[12] In this Final Rule, EPA indicates the main source of concern implicated by this issue is malfunctioning engines.[13] EPA therefore concludes that this is likely to be a rare occurrence. While malfunctions of this sort may rarely occur, this is not the primary concern motivating this concern or GPA's request for reconsideration of this issue.

To explain industry's concern more fully, remote detection technologies that are likely to be approved for the Super Emitter Program (such as satellites) currently lack sufficient granularity to distinguish

[10] New Mexico Administrative Code § 19.15.28.8.F(3)(a).
[11] North Dakota Industrial Commission Order 24665(4)(b).
[12] EPA Must Clarify the Final Rule to Prevent Double-counting Combustion Emissions Pursuant to the OLRE Provisions.
[13] 89 Fed. Reg. at 91,114 ("To qualify for reporting as an other large release event, the stationary combustion source must have methane emissions of 100 kg/hr or greater. We note that this emission rate would be evaluated on a per individual stationary combustion source basis unless they have a single root cause and we do not believe any single stationary combustion source would emit methane at this level unless it was significantly malfunctioning. Therefore, we expect that stationary combustion sources would be reported under the provisions of other large release events only under rare circumstances.").

emissions from individual sources. GPA believes this will result in situations where engine emissions comingled with other emissions (including other engines) are part of the Super Emitter "detection," even when a super emitter event has not occurred, and only normal emissions are present. Subpart W allows most "normal" emission sources to be identified as such and excluded from OLRE, but EPA failed to account for this scenario for combustion emissions while requiring that all Super Emitter Program notifications be treated as OLREs.[14]

In our petition for reconsideration on Subpart W, GPA suggested a simple and straightforward fix: include paragraph (z) in the list of sources referenced under 98.233(y)(1)(i) and (ii). EPA instead chose to offer a "work around" for the purposes of assessing the WEC fee that nevertheless retains the potential for double-counting these emissions under Subpart W (which is clearly problematic for reasons outside of WEC fees). EPA must ultimately resolve this issue by amending Subpart W. GPA encourages the Agency to do so in these proceedings or related proceedings addressing Sub[art W more fully, whichever approach can be accomplished more efficiently.

Netting: EPA Must Allow for Netting of Facilities that Emit ≤ 25,000 mt CO2e as Intended by Congress.

Under the Final Rule, to qualify for netting, petroleum and natural gas facilities must have Subpart W emissions greater than 25,000 mt CO2e. This interpretation unnecessarily constrains the netting Congress called for. EPA should adopt a netting approach that maximizes flexibility and fully realizes the intent of Congress by facilitating netting to the greatest extent feasible.

Congress instructed EPA In Section 136(f) of the CAA to allow for the netting of waste emissions by accounting for facility emissions levels below applicable thresholds pertinent to nine Subpart W industry segments listed in Subsection 136(d). Congress did not instruct EPA to make netting of waste emissions contingent upon a facility falling within one or more of the nine CAA section 136(d) industry segments *and* reporting more than 25,000 mt CO2e under Subpart W, as EPA claims.[15] Neither did Congress communicate or imply that the waste emissions thresholds in 136(f)(1)-(3) apply exclusively to facilities with Subpart W GHG emissions greater than 25,000 mt CO2e. Instead, Congress clearly conveyed its intention in Subsections 136(d) and (f) to broadly apply waste emissions thresholds and netting provisions across numerous industry segments and geographic areas comprising the Petroleum and Natural Gas Sector. In the Final Rule EPA, conflates the facilities covered by section 136(c)'s requirement that EPA "impose and collect a charge" on facilities above the fee threshold with the facilities that are available for netting.[16] The statute does not make this connection. On the contrary, the statute provides that netting is to be available to "*facilities* under common ownership or control, . . . for *facility* emissions levels that are below the applicable thresholds *within and across all applicable segments identified in*

[14] 40 C.F.R. § 98.236(y) ("You are not required to measure every release from your facility, but if you have EPA-provided notification(s) under the super emitter program in § 60.5371, 60.5371a, or 60.5371b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or if EPA- or facility-funded monitoring or measurement data that demonstrate the release meets or exceeds one of the thresholds or may reasonably be anticipated to meet or exceed (or to have met or exceeded) one of the thresholds in paragraph (y)(1) of this section, then you must calculate the event emissions and, if the thresholds are confirmed to be exceeded, report the emissions as an other large release event.").

[15] *See, e.g.*, 89 Fed. Reg. at 91,108.

[16] *Id*.

subsection (d)."[17] The facilities identified in subsection (d) are *all* applicable facilities within the nine segments covered by the statute—not the applicable facilities that also emit more than 25,000 mt CO2e.

This interpretation of the statute effectuates the only purpose of netting, which is to reduce fee obligations. As such, bringing facilities into netting that are below the fee obligation is not a reason to exclude them from netting. Indeed, facilities with annual Subpart W emissions less than or equal to 25,000 mt CO2e are applicable facilities under section 136(d), with applicable waste emissions thresholds in section 136(f), even though their emissions fall below the 25,000 mt CO2e fee threshold. Because these facilities could increase their emissions at any time to exceed the 25,000 Subpart W mt CO2e statutory cutoff for application of the WEC, this is not a case where an owner or operator would be netting emissions, *i.e.*, getting credit, for "various other Subpart W facilities for which a WEC charge can never be imposed."[18] These facilities could become subject to a charge. The ability to net emissions from these facilities, moreover, provides a strong incentive to ensure that emissions from those facilities do not increase, consistent with the overall purpose of the WEC and CAA Section 136.

To support its interpretation, EPA states that "should the WEC program allow netting from subpart W facilities emitting 25,000 mt CO2e per year or less under Subpart W, WEC obligated parties would lose an incentive to reduce emissions at WEC applicable facilities that exceed their waste emissions thresholds."[19] However, EPA does not evaluate the policy implications of the Final Rule incentivizing facilities below waste thresholds to keep emissions above 25,000 mt CO2e to maintain the ability to net emissions from those facilities.

Applying a broad approach to the netting process provides parent companies an incentive to explore and implement cost-effective methane reduction opportunities across their entire operations rather than limiting reductions to those that can be achieved at a subset of their facilities. By restricting netting to facilities with Subpart W mt CO2e greater than 25,000 mt CO2e, EPA is excluding hundreds of facilities across the nation within the Petroleum and Natural Gas Sector from these incentives. These facilities include interstate transmission compressor stations and natural gas processing plants.

EPA also ignores the inequity of applying the 25,000 mtCO2e netting threshold to both single facilities and entire basins. It is not realistic for many basin-level reporters to ever get below 25,000 mt CO2e, especially given EPA's constraints in Subpart W, such as requiring operators to report unidentified leaks, limiting operators' ability to claim higher destruction and removal efficiency ("DRE") on combustion control devices, and inclusion of engine methane slip under Subpart W instead of Subpart C.[20] However, it is realistic for individual facility reporters, such as transmission compressor stations and natural gas processing plants, to get below the 25,000 mt Subpart W CO2e threshold. Given this disparity and given Congress's directive to implement netting on a broad basis, it is critical that reporters be allowed to net emission reductions at those individual facilities with basin-level facilities.

[17] CAA § 136(f)(4); 42 U.S.C. § 7436(f)(4).
[18] 89 Fed. Reg. at 91,109.
[19] *Id*.
[20] Petition for Reconsideration and Request for Partial Administrative Stay of EPA's Final Rule: "Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems" Docket ID No. EPA-HQ-OAR-2023-0234 89 Fed. Reg. 42,0062 (May 14, 2024) (July 12, 2024).

Further, incentivizing companies to report emissions by offering the potential for netting will result in more reported data to EPA, and would incentivize parent companies to more broadly reduce methane emissions across the entirety of their operational enterprises.

For all of the reasons addressed above, all petroleum and natural gas facilities that report under Subpart W, regardless of mt CO2e emission levels, should be allowed to net. These facilities should include: (1) facilities currently required to report in e-GGRT because they have emissions greater than or equal to 25,000 mt CO2e under Subpart C and Subpart W but have less than 25,000 Subpart W mt CO2e; (2) facilities that have less than 25,000 (Subpart C+W) mt CO2e but are required to report during the three- or five-year "roll off" time period; and (3) facilities that voluntarily reported in e-GGRT that have less than 25,000 Subpart W mt CO2e.

Exemptions: The Regulatory Compliance Exemption Should Apply on a Site-by-Site Basis as Soon as the Site Meets All Applicable OOOOb/c Requirements.

In the Final Rule, WEC applicable facilities can only claim the regulatory compliance exemption once the final compliance date for applicable CAA section 111(b) and (d) facilities has passed in the State(s) and Tribal lands in which the WEC applicable facility is located.[21] EPA explains: "For example, if an approved plan establishes compliance dates for some CAA section 111(d) designated facilities in 2029 and compliance dates for other designated facilities in 2030, all WEC applicable facilities in that State could begin to claim the exemption as of the 2030 compliance date."[22] As such, all facilities in a single State will be eligible to claim the regulatory compliance exemption at the same time.

Rather than EPA's state-wide final compliance date approach, the regulatory compliance exemption should apply as soon as all CAA section 111(b) affected facilities and CAA section 111(d) designated facilities at a site are in compliance with the NSPS OOOOb and EG OOOOc-implementing plans, for several reasons.

First, the regulatory compliance exemption is assessed at a site-level in the Final Rule. EPA's Final Rule provides that"[o]nce the exemption is available to a WEC applicable facility under this framework, all CAA section 111(b) and (d) facilities contained within a WEC applicable facility will be required to demonstrate compliance in order to claim the exemption pursuant to CAA section 136(f)(6)(A)."[23] The Final Rule also provides for site-by-site compliance assessments for purpose of determining whether the exemption applies or has been lost:

> For all WEC applicable facilities defined at the basin-level (i.e., facilities in the onshore production and gathering and boosting industry segments), the EPA is finalizing that loss of exemption availability would be applied at the 'site' level rather than the facility level; for facilities in

[21] 89 Fed. Reg. at 91,125.
[22] *Id*. EPA further explains, "[i]n cases where the final compliance date applies to a CAA section 111(b) or (d) facility subject to a methane emissions standard that has phased-in requirements, the final compliance date is the date of the final requirement to be phased in." *Id*.
[23] *Id*.

> all other industry segments, the EPA is finalizing as proposed that the exemption would be lost at the facility level.[24]

In other words, the Final Rule already contemplates site-by-site compliance assessment by the reporter. Aligning availability of the exemption with this site-by-site approach would provide greater internal consistency. EPA argues that applying such a site-by-site approach to exemption availability involves too much complexity and burden in verification.[25] However, Congress did not mandate that EPA establish a verification process that goes beyond reasonable reliance by EPA on self-reported compliance with OOOOb and OOOOc requirements, and one is not necessary to ensure emission reductions or environmental protection.

Second, EPA's own reasoning supports availability of the exemption based on compliance on a site-by-site basis. In explaining its rationale for conditioning availability of the exemption on a compliance date approach, rather than an effective date approach, EPA explains that "the Congressional intent of the regulatory compliance exemption . . . is to provide relief from the WEC to applicable facilities that are 'subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111'— that is, those actually achieving the requirements and achieving the attendant emissions reductions therein."[26] If a site is in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111, that site should be able to avail itself of the regulatory compliance exemption from the methane fee. Under EPA's approach, on the other hand, the opposite will occur. For instance, a brand-new site meeting all OOOOb requirements would nevertheless continue to be subject to the methane fee due to the compliance status of completely unrelated sites within the same State.

Third, EPA has misjudged the nature of the incentives the Final Rule will produce, undermining its justification for the compliance date approach EPA has adopted. Specifically, EPA justifies its "final compliance date approach" by arguing that "States will be incentivized to promptly submit approvable EG OOOOc-implementing plans with timely compliance deadlines so that WEC applicable facilities within their borders gain access to the exemption."[27] EPA fails to acknowledge, however, that States are obligated to allow ample time for existing sources to meet the EG OOOOc requirements due to the significant effort and expenditure that will be required to retrofit tens of thousands of facilities. No incentive can overcome that reality. Premising the availability of the regulatory compliance exemption on the final compliance date for all facility types within a state therefore contradicts Congress's intent that the exemption be available to facilities that are in compliance with the relevant standards without meaningfully affecting or incentivizing more timely action. This rationale, therefore, does not support the Final Rule.

Fourth, EPA appears to assert, based on incomplete information, that its compliance date approach will not negatively impact sources because they can avoid application of the fee by reducing emissions (potentially through compliance with OOOOb and OOOOc):

---

[24] *Id*. at 91,122.
[25] *Id.* at 91,125 "The complexity required for industry reporting and the EPA's verification render making the compliance exemption available at this granular of a level unworkable for several reasons."
[26] *Id*. at 91,126.
[27] *Id*. at 91,127.

> Importantly, irrespective of CAA section 111 compliance, only WEC applicable facilities with methane emissions over the waste thresholds will be subject to charge. Thus, WEC obligated parties may choose to act early to reduce applicable emissions sufficient to avoid the charge, even before any compliance dates have passed.[28]

This rationale does not consider the impact of including combustion methane emissions in the methane fee obligation. Combustion methane emissions alone will likely preclude most gathering and boosting reporters from reducing emissions below the 25,000 Subpart W mtCO2e threshold, and possibly also below the waste threshold. As such, early compliance with OOOOb and OOOOc does not necessarily provide a reasonable pathway to avoiding methane fees.

Finally, EPA did not assess the impact of its Final Rule and its adoption of the "compliance date" approach on fees that will be paid by reporters. Comparing those fees to the fees that would be paid under a site-by-site regulatory compliance exemption approach is a basic requirement for engaging in reasoned decision-making. Indeed, the size of the fees and the scope of their coverage under different regulatory approaches is a central aspect of this rulemaking. On reconsideration, EPA must take this information into account.[29]

For all of these reasons, EPA's decision to adopt its "compliance date" approach to determining the availability of the regulatory compliance exemption is flawed. EPA should revise the Final Rule to provide for the exemption's availability on a site-by-site compliance basis.

It is also unclear how the "final compliance date" approach should be applied in certain circumstances. For example, its is unclear if a gathering and boosting reporter must wait until the final compliance date for production-related requirements. It is also unclear if a gas plant fully compliance with OOOOb and OOOOc must wait until the final compliance date eliminating natural gas pneumatics at gathering and boosting facilities before the exemption is available.

Exemptions: The Compliance Exemption Should Be Available to Sites within a Basin Based on the State Rules Applicable to the Site, Not Based on Multiple State Rules Applicable to the Basin.

As described in the preamble, "EPA is finalizing that for WEC applicable facilities in industry segments for which a facility is defined at the basin level in subpart W that span multiple States (e.g., onshore production and gathering and boosting facilities), the [regulatory compliance] exemption is not available until the final compliance date has passed for all States in which the facility is located."[30]

If EPA maintains the "final date of compliance" approach (which GPA contends it should not), reporters should be able to apply the compliance exemption to portions of sites within a basin, on a state-by-state basis. The Final Rule contains provisions for assessing compliance on a site-by-site basis, making it reasonable to allow the exemption to apply to a portion of sites within the basin-level facility when the basin-level facility spans multiple states.

---

[28] *Id*. at 91,125.

[29] *See* M*otor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 44 (1983) (an agency rule is arbitrary and capricious if the agency "failed to consider an important aspect of the problem").

[30] 89 Fed. Reg. at 91,125.

At this time, it is unclear if there will be material differences in the "last date" of compliance in the state plans implementing EG OOOOc, but the possibility is real and a significant risk to facilities covered by the rule. The risk posed to facilities is, moreover, without any corresponding benefit. Application of EPA's current rules could, for instance, lead to situations where a basin-level facility may have a significant number of sites that are in compliance with OOOOc in one state, but sites within the basin-level facility are barred from utilizing the exemption due to the differing compliance deadlines in another state. EPA recognized the inequity a similar situation would create when it made clear that WEC applicable facilities that are located in single states within basins that cover more than one state can nevertheless claim the regulatory compliance exemption based on the compliance date for the single state in which the facility is located:

> In cases where such a WEC applicable facility could span multiple States because it is located in a basin that covers multiple States, but the WEC applicable facility itself is only located in a single State, exemption availability for that facility will be based only on the final compliance deadline for the single State in which the WEC applicable facility is located.[31]

GPA contends there is no reason that certain sites should be held back in their application of the exemption due solely to the deadlines of other states in which those sites do not operate. Further, revising the rule to focus the exemption's availability on compliance in states in which individual facilities operate would enhance the internal consistency of EPA's Final Rule, and help to ensure that all similarly situated facilities are treated fairly and the same. Failure to address this internal inconsistency jeopardizes the lawfulness of the Final Rule.[32]

Penalties: Only Significant Deviations or Violations Should Result in Penalties.

Section 99.11 of the Final Rule provides that "any violation of any requirement" under the WEC regulations will be treated as a violation subject to a daily Federal CAA penalty. Under EPA regulations at 40 C.F.R. § 19.4, this would include a civil penalty up to $121,275 per day per violation of the WEC regulations.

GPA's comments on the Proposed Rule asked the EPA to tailor the penalty provision so that it was limited to situations where a deviation was willful or had a substantive impact on the WEC fee that a company owed, citing a variety of examples of requirements stated in the Proposed Rule for which a violation clearly would not warrant a penalty. EPA responded to these comments:

> The EPA acknowledges the commenters' concerns and will take them under consideration during implementation and enforcement of the rule. The EPA cannot anticipate all scenarios which could be perceived as a violation, therefore, we are not codifying the suggestions into the final rule. After review of the comments received, the EPA made adjustments

[31] *Id*.

[32] *Sierra Club v. EPA*, 719 F.2d 436, 459 (D.C. Cir. 1983) (unexplained inconsistency is "the hallmark of arbitrary action").

to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations.[33]

EPA's response ignores the substance of the issue and instead indicates that, by giving companies more time to complete their WEC filings, the EPA considered the risk of enforcement to companies to be reduced.

GPA asks the EPA to reconsider this aspect of the Final Rule in light of the nature of the EPA's statutory authorization regarding the WEC. While CAA Section 136 authorizes the EPA to collect the WEC fee—and a failure to pay the WEC fee would subject a company to the CAA's existing enforcement mechanisms at 42 U.S.C. § 7413—it contains no language authorizing many features of the Final Rule, such as those referenced in this part of GPA's comments, like the requirement for multiple owners/operators to have a written agreement on WEC Obligated Party status, or enforcement for putting the wrong subsidiary name on a WEC filing, or errantly overstating and overpaying the WEC fee. While it is reasonable for the EPA to ask for information to support a WEC calculation and administer the fee program, it does not follow that any technical, inadvertent violation of those information collection provisions should be seen as a violation of the CAA. Section 99.11, in combination with other parts of the Final Rule, creates an option for the EPA to wield significant enforcement authority against companies that are, fundamentally, complying with the law by paying the WEC fee. In addition, by adding requirements that create the potential for additional, technical violations of the fee payment obligation, the EPA has effectively circumvented the daily maximum penalties stated in the CAA (i.e., by setting up a rule program whereby an entity failing to pay or underpaying WEC fees will also necessarily violate multiple Part 99 provisions).

GPA recognizes that the EPA has stated in the Response to Comments Document that it will consider these types of issues in implementation and enforcement of the WEC fee program. Although GPA appreciates this signal of goodwill, it is not part of the Final Rule and its effect on future EPA enforcement is uncertain. It also does not cure the absence of statutory authority for the EPA to design a regulation that creates enforcement exposure for a company that complies with the CAA's fee-paying mandate, nor does it cure the EPA's regulatory design that circumvents the maximum penalties stated in the CAA.

GPA asks the EPA to revise section 99.11 of the Final Rule to conform to this aspect of our comments. We offer below a potential edit to section 99.11 that would achieve this effect:

> **§99.11 What are the compliance and enforcement provisions of this part?**
>
> Any violation of any requirement of this part shall be a violation of the Clean Air Act, including section 114 (42 U.S.C. 7414) and section 136 (42 U.S.C. 7436)***, but only if that violation is willful or causes an underpayment of the WEC obligation***. A violation ***could*** ~~would~~ include ***a willful*** ~~but is not limited to~~ failure to ***do one or more of the following:*** submit, or resubmit as required, a WEC filing, ~~failure to~~ collect data needed to calculate the WEC obligation (including any data relevant to determining the applicability of any exemptions and how the netting was conducted), ~~failure to~~ select a WEC obligated part, ~~failure to~~ authorize a designated representative, ~~failure to~~ retain records needed to verify the amount of WEC obligation, ***provide accurate*** ~~providing false or incorrect~~ information in a WEC filing, and ~~failure to~~ remit WEC payment***; or any of the***

[33] Response to Comments Document at 167-68.

foregoing, even if not willful, if it caused an underpayment of the WEC obligation. Each day of violation constitutes a separate violation. Any penalty assessed shall be in addition to any WEC obligation due under this part and any fees applicable to delinquent payments due under § 99.10.

Third-Party Audits Must Be Subject to Reasonable Standards or Eliminated.

Under the Final Rule, "where the EPA is unable to calculate the WEC with available information due to unresolved errors in either an included part 98 report(s) or the part 99 report, the WEC obligated party may be required to undergo a third-party audit."[34] Third-party audits "may be required to be arranged by and conducted at the expense of the WEC obligated party."[35] In comments on the Proposed Rule, GPA expressed concern about the lack of standards governing when third-party audits might be required. In response, EPA states that it "is therefore clarifying that, in cases where the EPA is unable to calculate the WEC with available information due to unresolved errors in either an included part 98 report(s) or the part 99 report, the WEC obligated party may be required to undergo a third-party audit."[36] This clarification provides no meaningful additional guidance or standards to govern the use of third-party audits, and it does not address the concern GPA articulated in its comments.

Under the current version of the rule, GPA is concerned that third-party audits may be used to revisit and revise past reports without reasonable limitation, with considerable additional burdens and expense. The experience of GPA members regarding EPA's requests for report verification under Subpart W informs this concern. EPA has a history of providing notifications under § 98.3(h)(2) for part 98 reports that are up to 5 years old. The Final Rule allows EPA to request WEC revisions and third-party audits on these old reports. The previous Subpart W rule was very prescriptive and still solicited a large amount of verification requests from EPA, again, often for reports that were submitted years prior. The newly revised Subpart W is even more complex with multiple data collection and calculations options, and GPA anticipates that EPA will continue its pattern of issuing part 98 report revision requests years after the reports are submitted. As such, third-party audits could be a significant burden if not appropriately limited.

Limitation on the use of third-party audits is consistent with the structure of section 136. Tellingly, the statute does not mention or expressly authorize the use of third-party audits. EPA does not, moreover, appear to identify clear statutory authority to mandate the use of third-party audits. On the contrary, the statute is clear that EPA is to provide for rules that "allow *owners and operators* of applicable facilities to submit empirical emissions data."[37] While the Administrator may have some discretion to require third-party verification under certain circumstances, the statute's emphasis on the provision of data by owners and operators suggests, at the very least, that there must be a clear standard in place for the use of third-party audits and that their use should be limited.

Because EPA has not fully responded to GPA's previous comment on this issue and because the statute calls into question EPA's authority to require third-party audits, as provided in the current rule, GPA asks that EPA reconsider this issue, fully evaluate the scope of its legal authority to require third-party audits, and develop appropriate guardrails and standards for the use of third-party audits. Reporters should not

[34] 89 Fed. Reg. at 91,147.
[35] *Id*. at 91,148.
[36] *Id*. at 91,147.
[37] CAA § 136(h); 42 U.S.C. § 7436(h).

have to pay for third party audits stemming from issues EPA identified after the initial verification year. Additionally, the scope of the audit and materials provided in the audit should be limited; if a third-party audit is required by EPA due to an unverified issue in a part 98 report, then the scope of the third-party audit and the information provided to the third-party auditor should be limited to data, calculations, and records associated with the specific issue.

The WEC Must Be Coordinated with EPA's Other Rules Governing Methane Emissions and GHG Reporting.

This Final Rule is the third piece in a set of intertwined regulations: OOOOb/c, Subpart W, and the WEC. All three final rules need revisions to ensure the rules are harmonized, including the following items identified in GPA's petitions for reconsideration on OOOOb/c and Subpart W:

- Subpart W issues that over-estimate emissions or otherwise impede a reporter's ability to accurately report emissions reductions:
    - Reporters subject to OOOOb and OOOOc requirements should not be required to apply EPA's undetected leak factor.
    - EPA must revise its overly conservative leak emission assumptions to ensure accurate reporting.
    - EPA must clarify the Final Rule to prevent double-counting combustion emissions pursuant to the OLRE provisions.
    - EPA must provide a clear pathway to excluding gathering pipeline emissions during a pipeline leak event.
    - EPA must revise Subpart W to remove unlawful new flare requirements.
    - EPA must revise the inaccurately high crankcase methane concentration in Eq. W-45.
- OOOOb/c requirements that impede reporter's ability to claim the WEC regulatory compliance exemption:
    - EPA should clarify that fugitive emission requirements for closed vent system are work practices and not numeric limitations. Otherwise, facilities with closed vents systems could not reliably avail themselves of the fee via the regulatory compliance exemption.
- Inconsistencies between Subpart W and OOOOb/c:
    - EPA must revise the Final Rule to eliminate annual measurement of reciprocating compressors using the annual packing changeout option in OOOOb.
    - Subpart W reports must not be required to include emissions from Super-Emitter Program notifications that contain demonstrable errors.

Technical Correction: EPA Should Revise Table-2 of the Final Rule to Align Throughput Definitions with Subpart W.

Table 2 "Industry Segment Throughput Metrics and Methane Intensities" in the preamble of the Final Rule lists the throughput metric for each industry segment along with the GHGRP citation. GPA notes that Table 2 does not contain the correct language for section 98.236(aa)(10)(ii), which was revised in May 2024.

Conclusion

For all the foregoing reasons, EPA should grant this Petition, stay the Final Rule, and promptly initiate a new rulemaking to respond to this Petition. GPA welcomes the opportunity to further work with EPA in responding to this Petition.