

## **EPA Finalizes Methane Regulations for Oil and Gas Sector**

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On December 2, 2023, the Environmental Protection Agency (“EPA”) announced a final Clean Air Act rule establishing methane emission standards for facilities in the oil and gas sector (the “Methane Standards Rule”). EPA estimates that the new standards will reduce the sector’s methane emissions by 80% between 2024 and 2038. The Final Rule will also reduce Volatile Organic Compounds, which contribute to ozone pollution.

The version of the Methane Standards Rule announced on December 2nd is considered a “pre-publication” version, which anticipates ultimate publication in the Federal Register. The EPA sometimes makes small corrections to a pre-publication rule prior to its publication in the Federal Register.

The Methane Standards Rule was one of the Biden Administration’s major climate policy announcements at the COP-28 climate treaty talks in Dubai.

### **Standards for New Facilities and Existing Facilities**

The Methane Standards Rule divides the oil and gas sector into two categories: (1) facilities that commenced construction, modification, or reconstruction after December 2, 2022 (“new” facilities); and (2) facilities that commenced construction prior to that date (“existing” facilities).

For new facilities, the EPA has promulgated requirements that generally apply upon commencement of operations, although the requirements for some types of new facilities and equipment will be phased in. For existing facilities, the Methane Standards Rule establishes presumptive requirements and other guidelines for states to use in developing state-specific regulatory plans. States have 24 months to submit their plans to the EPA for approval. States can establish compliance deadlines for existing facilities that are as much as 36 months after the deadline for submission of

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state plans, i.e., five years after publication of the final EPA rule.

## **Restrictions on Flaring, Process Controllers, Pumps, and Storage Tanks**

The Methane Standards Rule phases out routine flaring at existing wells; there is an exception for some older, low-emitting wells. New wells have to phase down flaring over a two-year period. The regulations also phase out gas-driven process controllers and pumps in favor of equipment that runs on electricity and does not emit gas.

## **Leak Detection and Repair**

A centerpiece of the Methane Standards Rule is the set of requirements for wells and compressor stations to conduct regular surveys for methane leaks and to repair them—referred to as the Leak Detection and Repair (LDAR) requirements.

The required frequency of LDAR surveys depends on the type of facility and the method used for surveying. Innovation is occurring rapidly in this area. Increasingly, oil and gas companies are forgoing handheld cameras in favor of satellites, aerial surveys, and continuous monitors. To accommodate and encourage these innovations, the Methane Standards Rule establishes a framework through which owners and operators of regulated facilities can use EPA-approved advanced methods, including combinations of methods, to satisfy their LDAR obligations. Under this framework, the EPA will approve advanced methods on an ongoing basis.

## **“Super Emitter” Response Program**

The Methane Standards Rule also introduces a program through which the EPA will leverage data collected by third parties to identify and require operator responses to very large leaks. These so-called “Super Emitter” events comprise a large proportion of total methane emissions from the sector. Under the “Super Emitter Response Program,” the EPA will certify third-party entities using EPA-approved technologies to identify and notify the agency of large methane releases. The EPA will review the data and can direct the responsible facility owners or operators to investigate and respond.

A proposed version of the Methane Standards Rule would have authorized certified third-parties to play a more unmediated role in contacting companies and triggering inspections. Under the final rule, however, the EPA will vet data received from the third parties and the agency will take charge of facility notifications.

## **Broader Context of Methane Policies**

The EPA is also expected to publish a proposed rule outlining procedures for implementing the methane “Waste Emissions Charge” enacted by Congress as part

of the 2022 Inflation Reduction Act, this month. The Waste Emissions Charge program will apply to larger facilities in the oil and gas sector and will impose a fee if a facility's methane emissions intensity (emissions relative to gas throughput) exceeds a statutory threshold. Congress established that facilities subject to the Methane Standards Rule can be exempt from the Waste Emissions Charge under certain circumstances.

In August, the EPA [proposed revisions](#) to its "Subpart W" emissions reporting program that will affect how it implements the Waste Emissions Charge. However, the Subpart W proposal did not reach the question of how the Methane Standards Rule-based exemption will work. In addition, the proposal left questions about the extent to which facility owners and operators can use advanced methane measurement technologies to calculate their methane intensity.

Furthermore, the EPA's announcement of the Methane Standards Rule comes against a backdrop of other domestic and international methane-related announcements, including a new [European Union methane regulation](#), a new [methane pledge by China](#), a new [draft Canadian methane regulation](#), and a new [international working group to establish a methane measurement, monitoring, reporting, and verification framework for natural gas markets](#). Some of these developments are summarized in a Van Ness Feldman alert from last month: ["Taking Stock of a Big Month for Methane Policy."](#)

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