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US EPA Finalizes Rulemaking for Methane Emission Reductions

Article By:

Madeline Mischler

Jennifer Tharp

On December 2, 2023, the United States Environmental Protection Agency (EPA) issued the pre-publication version of its Final Rule for standards of performance in the Oil and Natural Gas sector. The original proposed rule, published on November 15, 2021, sought to strengthen methane standards for new sources (New Source Performance Standards or NSPS), establish nationwide emission guidelines (EG) for regulation of existing sources, and develop new standards for unregulated sources. EPA later issued a supplemental proposed rulemaking on November 15, 2022 (2022 Supplemental Proposed Rulemaking), as we summarized in our previous post. In total, EPA received nearly 1 million public comments on this rulemaking. The rules, when published in the federal register, will be included in 40 CFR Part 60, Subpart OOOOb (NSPS) and Subpart OOOOc (EG).

The Final Rule is projected to reduce methane emissions by 80-percent and covers production and processing (*i.e.,* well sites, compressor stations, and natural gas processing plants) as well as natural gas transmission and storage. The Final Rule includes several key changes from the November 2022 Supplemental Proposed Rulemaking:

Applicability Date: The new applicability date is December 6, 2022, meaning only sources constructed after December 6, 2022 are subject to the NSPS. Sources that were constructed before December 6, 2022, including sources constructed between the original November 2021 proposal and December 6, 2022, are *existing sources*.

Super Emitter Program: The Super Emitter Program requires an owner or operator to investigate, and if necessary, take steps to ensure compliance with the applicable regulation(s) upon receiving certified notifications of detected emissions that are 100 kilograms per hour (kg/hr) of methane or greater. Owners and operators must begin the investigation within 5-days of receiving a super-emitter event notification from EPA and must report back to EPA with the results of the investigation “within 15-days after receiving such notification.”

In the November 2022 Supplemental Proposed Rulemaking, the EPA designed the Super Emitter Program so that EPA-certified third parties would monitor emissions and provide owners and

operators with notifications of super-emitter events. Many commenters objected to third parties providing such notification because it triggers investigation and reporting requirements for owners and operators. The Final Rule explains that in response to comments, EPA will provide these notifications. EPA will first review third party notifications for completeness and to ensure a super-emitter event actually did occur, then EPA will send the notification on to the affected owner or operator.

Additionally, the Final Rule requires the EPA to post the super-emitter notification but without attributing the super-emitter event to a specific company or person. The EPA may only post such an event after making its own determination that the super-emitter event occurred.

Advanced Methane Detection: The Final Rule allows owners and operators the flexibility to use alternative and multiple technologies to detect fugitive methane emissions. To that end, the Final Rule clarifies "the Administrator['s] authority in the approval process, the criteria for who may submit requests for approval, and the requirements for what information must be submitted by those entities seeking approval."

Owners and operators may implement methane detection technologies in the form of either "periodic screening or continuous monitoring for fugitive emissions and emissions from covers and closed vent systems (CVS) used to route emissions to control devices." Part of the EPA's goal is for these advanced methane technologies to help "identify super-emitter emissions events sooner and outside the normal periodic [optical gas imaging (OGI)] monitoring for fugitive emissions, control devices, covers on storage vessels, and CVS."

The Final Rule leaves the periodic monitoring approach mostly unchanged from the 2022 Supplemental Proposed Rulemaking. But section 60.5398b(c)(1)(iii) of the Final Rule, taking into account comments on the 2022 Supplemental Proposed Rulemaking, provides several clarifications to the continuous monitoring screening approach as follows:

Defines "requirements for operating continuous monitoring systems." A continuous monitoring system must: (1) have a detection threshold of "at least 0.40 kg/hr of methane and (2) "transmit all applicable valid data at least once every 24-hours;"

Requires that "[t]he continuous monitoring system must continuously collect data" in accordance with requirements in 40 C.F.R. §60.5398b(c)(1)(iv); and

Revises "action levels" for the continuous monitoring screening approach "to account for the potential for background methane emission levels at many of the sites."

Flares: Based on comments on the 2022 Supplemental Proposed Rule, the Final Rule requires owners and operators to phase out routine flaring and ultimately prohibit newly constructed wells from flaring associated gas altogether. Additionally, the Final Rule requires owners and operators to monitor their flares during routine fugitive emissions inspections

Leak Detection: The Final Rule creates a protocol for using OGI in leak detection. This protocol applies broadly to facilities "to help determine the presence and location of leaks; it is not currently applicable for use in direct emission rate measurements from sources." The protocol is located in Appendix K to 40 C.F.R. Part 60.

Lead Time: In response to industry comments, the Final Rule provides industries with more lead time

to prepare to comply with this rule. For example, the rule provides new sources with a “two-year phase-in period for eliminating routine flaring of natural gas from new oil wells, and a one-year phase-in of zero-emissions standards for new process controllers and pumps outside of Alaska.” The rule provides states (and Tribes that choose to regulate existing sources) with “two years to develop and submit their plans for reducing methane from existing sources.” Additionally, existing sources operating in states that must develop their own plan have five-years from the effective date of the Final Rule to when they must comply with their state plans.

The NSPS for new wells requires owners and operators to route associated gas to a sales line or use it for another useful purpose, reinject it, or use it as a fuel. Alternatively, owners and operators can show that these options are “technically infeasible.” The EPA in its 2022 Supplemental Proposed Rulemaking requested comment from the regulated industry on advanced technologies that could allow industries to use associated gas for another useful purpose. In response, some commenters urged the EPA not to adopt a Final Rule that listed specific types of technologies. Accordingly, the Final Rule does not define the types of alternative technologies industries may use to reduce their methane emissions from associated gas as an alternative to routing associated gas to a sales line.

But the NSPS still allows owners and operators to use new technologies to meet the “other useful purpose” rule so long as the technologies “enable [the owner or operator] to comply with the standards of performance” as required under CAA § 110(j). Additionally, to show that another useful purpose is “technically infeasible,” an owner or operator, “along with the qualified professional engineer or other qualified personnel performing the evaluation, [must] conduct due diligence by ensuring that the list of options evaluated be comprehensive and address commercially viable solutions.”

The Final Rule has not yet been published, but the EPA has provided for review the pre-publication version of the Final Rule. To see the fact sheets related to the rule, see the EPA’s website. We are prepared to assist clients in engaging with the Agency and complying with the rule when it is published in the Federal Register, including strategies to implement advanced technologies and identify approaches for monitoring compliance.

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