

## OIRA Teleconference

October 16, 2024

### EPA Waste Emissions Charge (WEC) Regulations

#### *Overview*

- The WEC proposal presents significant issues, but they must be also viewed in the context of EPA's Subpart W revisions that failed to meet the mandate of the MERP requirements that EPA produce a more accurate and empirically based reporting system.

#### *Specific WEC Issues*

##### *Definition of Applicable Facility*

- EPA fails to use a facility definition that is consistent with the Clean Air Act.
  - EPA relies on its Subpart W facility definition, but EPA determined that oil and natural gas facilities should not be aggregated under the Clean Air Act.
  - The IRA does not compel EPA to use the Subpart W definition for the WEC and EPA should not.
  - While the Clean Air Act limits aggregation to adjacent facilities under common ownership, Subpart W aggregates across entire states or in multiple states.

##### *Calculations of WEC Emissions Thresholds*

1. *EPA fails to use natural gas when the term is in the text of the statute.*
  - The MERP explicitly states that the WEC for natural gas production facilities will be based on emissions related to natural gas sales.
  - EPA bases its calculations on the density of methane not natural gas.
    - Natural gas is heavier than methane and this calculation illegally raises the methane tax.
  - EPA should provide a straightforward default value for natural gas to be used its calculation and allow alternatives to be used where they are available.
2. *The current approach is unfair to oil dominated production and must be changed.*
  - Because the WEC is calculated based on natural gas sales, it unfairly penalizes producers of oil that sell small amounts of associated gas.
  - Even worse, for oil producers that sell no associated gas, the calculation uses a threshold 29 times the comparable basis for natural gas production.

3. *The Gathering & Boosting emissions threshold has no identifiable basis and is inequitable*

- The Gathering & Boosting emissions threshold is well below other industry segments with no explanation of its basis while its emissions calculations are dominated by using mileage – not emissions – for their basis.

*Compliance Date for the Submission of Methane Tax Payments*

- Historically, validating Subpart W emissions calculations takes months of revisions before finalization.
- There is no MERP basis requiring the WEC to be due in March with this history and certainly no basis to penalize taxpayers if the initial calculations are low.
- EPA should collect the WEC after Subpart W calculations are finalized in November.

*Regulatory Compliance Exemption*

1. *The Exemption Proposal is Inconsistent with the Plain Reading of the Statute*

- EPA's interpretation of the regulatory compliance exemption expands its interpretation to absurdity. Its prohibition on the exemption's use until all states have approved plans prevents companies complying with regulations in states where they operate when states where they do not operate have failed to develop or complete plans.

2. *The Equivalency Proposal is Unfair and Designed to Prevent Use of the Exemption*

- EPA's failure to provide any interpretation regarding the equivalency of Subpart OOOOb to the 2021 proposal leaves industry in an unreasonable position as states develop implementation plans for Subpart OOOOc
- Simply put, if EPA's Subpart OOOOb regulations fail to be equivalent to the 2021 proposal, states would have to exceed an interpretation of the Subpart OOOOc 2021 proposal for the regulatory compliance exemption to be available.

3. *Actual Noncompliance Needs to be the Basis for Denying an Exemption*

- EPA fails to provide adequate information to assure that actual noncompliance would be the basis for denial of the exemption.
- EPA should assure that the compliance test should be substantive compliance, not some shallow failure to adhere to some trivial detail.
- The noncomplying events should be identified as a result of regulatory actions by the appropriate governing regulator.
- The events should be adjudicated to assure that they are actual noncompliance with fines, penalties or specific performance actions assessed.
- Only the applicable facility where the noncompliance occurred should be denied the exemption; other applicable facilities should not be affected.

### *Auditing, Compliance and Enforcement*

- EPA fails to provide any meaningful information on the implementation of auditing, compliance assessment and enforcement by the agency.
- Historically, EPA enforcement actions related to producers have been characterized by the agency singling out smaller producers and threatening them with fines that would bankrupt them.
- The MERP program provides hundreds of decision and calculation points that can be challenged.
- EPA has failed to provide any guidance regarding acceptable methods to determine the required information and avoid punitive enforcement initiatives.