



March 26, 2024

Re: Waste Emissions Charge for Petroleum and Natural Gas Systems

Docket No.: 2024-00938
RIN 2060-AW02

Taxpayers for Common Sense (TCS) respectfully submits the following comments to the Environmental Protection Agency (EPA) on the proposed rule, “Waste Emissions Charge for Petroleum and Natural Gas Systems,” (89 FR 5318, January 26, 2024).

Introduction

Taxpayers for Common Sense is a national nonpartisan budget watchdog that has been working on behalf of the nation’s taxpayers since 1995. The mission of TCS is to fight for a federal government that operates within its means and serves the broader public, rather than special interests. We focus our efforts on eliminating programs and policies that are both wasteful and harmful, subsidies to polluting industries, weapons systems that do not work, and perverse incentives that increase taxpayer and environmental risks.

As a multi-issue budget watchdog, we bring a perspective informed by both breadth and depth on issues ranging from agriculture, natural resource management, infrastructure, and national security. Our expertise on subsidized agriculture insurance programs, energy subsidies, water resources, flood and wildfire disaster response, and military spending offers a unique view of the ways in which misplaced priorities increase climate risks and impacts. These risks in turn create long-term harm for communities and increase liabilities for taxpayers.

Methane is a well-known contributor to the process of climate change, and TCS supports strong rules to limit the release of methane, including from the oil and natural gas industry. This waste threatens our energy security, costs us in lost revenue, undermines fiscal responsibility, and accelerates the impacts of climate change.

Methane Waste Costs Taxpayers

Methane, the primary component of unprocessed natural gas, is 80 times more potent than CO₂ during its first 20 years in the atmosphere. The Intergovernmental Panel on Climate Change (IPCC) has stressed that strong, swift, and sustained methane reductions are critical to mitigating near-term climate disruptions and to complementing reductions in other greenhouse gases (GHGs) to

limit the severity of climate change and its destructive impacts.¹ Petroleum and natural gas systems are the largest industrial source of methane emissions in the U.S., accounting for 30 percent of all U.S. emissions in 2022, according to EPA U.S. Greenhouse Gas Inventory data.²

These destructive impacts include enormous immediate costs and growing future liabilities for taxpayers. Federal emergency spending must address immediate and future costs of climate-induced extreme weather events. The National Oceanic and Atmospheric Administration reports that natural disasters are increasing in number and are becoming more costly, with a record number of billion-dollar weather-related disasters occurring in 2020.³ Over the past five years, taxpayers have borne an average annual cost of approximately \$62 billion, a 35 percent increase over the preceding five-year average, for various programs aimed at combating and mitigating climate impacts.⁴ Limiting methane emissions is therefore crucial in protecting taxpayers from escalating costs and liabilities in the near future.

In addition to the climate costs of emissions, methane waste also poses financial losses for taxpayers when it is not captured and sold on public land. Using Oil and Gas Operations Report (OGOR-B) data, TCS found that 300 billion cubic feet (Bcf) of natural gas was wasted on federal lands from FY2012 to FY2021.⁵ These estimates are likely conservative, as OGOR-B data relies on self-reporting from operators and there is little or no incentive for operators to estimate the volume of lost gas accurately given the limited oversight by the Department of the Interior (DOI).

Using satellite data on top of production data, another study commissioned by Environmental Defense Fund and TCS calculated that approximately 163 Bcf of natural gas was lost on federal and tribal lands in 2019 alone, far more than the operator self-reported volume.⁶ This wasted gas was worth roughly \$509 million and could have met the annual energy needs of 2.2 million households. The wasted gas also represented a combined loss of \$64 million in federal, tribal, and state royalty revenues.

A Methane Waste Emissions Charge Will Better Protect Taxpayers

TCS supports the creation of a waste emissions charge. We have long advocated for an end to methane waste and called for taxpayers to receive a fair return from natural gas that is leaked, vented, or flared from federal lands. For too long, oil and gas operators have been allowed to release methane into the atmosphere even though the technology to capture this valuable source

¹ IPCC, “Climate change widespread, rapid, and intensifying – IPCC,” August 9, 2021.

<https://www.ipcc.ch/2021/08/09/ar6-wg120210809-pr/>

² EPA, “Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022”,

<https://www.epa.gov/ghgemissions/draft-inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022>

³ NOAA, National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters, 2023. <https://www.ncei.noaa.gov/access/billions/>

⁴ Taxpayers for Common Sense, “Paying the Price,” June 7, 2023. <https://www.taxpayer.net/climate/paying-the-price/>

⁵ Taxpayers for Common Sense, “Gas Giveaways II,” Aug 30, 2022. <https://www.taxpayer.net/energy-natural-resources/gas-giveaways-ii-methane-wasteon-federal-lands-is-business-as-usual/>

⁶ Olivia Griot et. al., “Onshore Natural Gas Operations On Federal and Tribal Lands in the United States: Analysis of Emissions and Lost Revenue,” Jan. 20, 2023. (“Synapse”) https://www.taxpayer.net/wp-content/uploads/2023/01/EDF-TCS_Public_Lands_Analysis.pdf

of energy has long existed, passing down the costs of methane emissions to federal taxpayers through public health impacts, environmental degradation, and the escalating effects of climate change.

The proposed rule will create incentives for the oil and gas industry to reduce methane emissions by finally capturing at least a portion of the climate costs that methane emissions cause. Overall, although the fee proposed is quite moderate and comes with large exceptions, it has the opportunity to be an improvement over the existing system if implemented correctly.

TCS supports swift implementation and thorough oversight of the proposed rule, “Waste Emissions Charge for Petroleum and Natural Gas Systems.”

Comments on the Proposed Rule

TCS urges the Environmental Protection Agency to consider the following in relation to specific aspects of the proposed rule:

A. Detailed Reporting, Verification, and Transparency

TCS is encouraged that the proposed Waste Emissions Charge reflects proposed changes to the Greenhouse Gas Reporting Rule's requirements for the petroleum and natural gas systems source category (40 CFR 98, subpart W) in the proposed rule “Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems” (RIN 2060-AV83) and other changes, including a revision to the global warming potential of methane, in the proposed “Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule” (RIN 2060-AU35). TCS supports these proposed rules, which are designed to fill existing gaps in the current Greenhouse Gas Reporting Rule.⁷ Utilizing precise and comprehensive, all-encompassing data for the waste emissions charge is essential to the success of this program.

We urge the EPA to mandate detailed reporting from regulated entities and to enforce strict verification procedures, especially for entities seeking exemptions. We commend the requirement for entities receiving the permitting delay exemption to provide detailed information on each well pad or offshore platform, including the impact on methane emissions mitigation activities. For those receiving the regulatory compliance exemption, we support the requirement for reporting and recordkeeping of all associated data elements necessary for exemption eligibility verification. The EPA must also conduct thorough data auditing, including cross-agency oversight as appropriate.

Furthermore, we urge the EPA to ensure public accessibility of this data. Transparency is essential for maintaining public trust and ensuring industry accountability. The actions of private companies affect taxpayers: these companies benefit from taxpayer subsidies, carry out federally funded projects, and create liabilities that will strain public finances. Consequently, taxpayers have a

⁷ Taxpayers for Common Sense, “TCS Comments to the EPA on the Greenhouse Gas Reporting Rule,” October 2023. <https://www.taxpayer.net/energy-natural-resources/tcs-comments-to-the-epa-on-the-greenhouse-gas-reporting-rule/>

vested interest in the transparency of private companies' operations, particularly regarding their impact on climate change.

B. Ensure All Applicable Methane Emissions are Charged

The Inflation Reduction Act (IRA, P.L. 117-169) mandates that “in calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments.” While adhering to this congressional directive to allow the netting of emissions, TCS urges the EPA to impose restrictions to prevent operators from exploiting this provision and undermining the waste emission charge's intent, such as transferring or acquiring ownership for the purpose of avoiding the fee. We support the EPA's use of the owner or operator, not the parent company, for applying netting, as previously defined under subpart W regulations. This approach prevents abuse by large parent companies while allowing operators to benefit as intended by Congress.

TCS also supports the proposed waste emissions threshold calculation for methane emissions from gathering and boosting, natural gas processing, and other facilities with no reported throughput: considering all reported emissions as exceeding the waste emissions threshold.

C. Minimize Flaring

In the proposed rule, emissions caused by unreasonable delays in environmental permitting of gathering or transmission infrastructure are eligible for exemption from the waste emissions charge, as mandated by the IRA. Unreasonable delay must meet four criteria:

- 1) The facility must have emissions that exceed the waste emissions threshold.
- 2) The entity seeking exemption and the entity seeking the permit cannot have contributed to the delay.
- 3) Only flared gas that would have been mitigated without the permit delay and in compliance with all regulations is exempted.
- 4) An eligible “unreasonable delay” would be a delay that exceeds somewhere between 30 and 42 months from the date a permit was submitted for approval.

TCS strongly urges the EPA to add a criterion (hereafter referred to as the 5th criterion), as EPA suggests in the proposed rule, for requiring entities to document and certify that flaring was the last resort, and no reasonable alternatives were available. The EPA should require operators provide clear evidence why alternatives to flaring cannot successfully be utilized at their site. And a facility should fail to meet this criterion if another facility in a comparable situation successfully utilizes alternative methods like beneficial use and reinjection instead of flaring. This criterion should also be certified by a professional engineer or other qualified personnel. Additionally, for operators to qualify for an exemption on flaring, the EPA should require them to demonstrate that flaring reduced methane emissions by at least 95.0 percent.

Flaring is an egregious waste of a valuable natural resource that could have been brought to consumers and the associated emissions contribute to the rising taxpayer costs of climate change. There are a number of options to avoid routine flaring, including, as the EPA has previously noted, “routing the gas to a sales line, using the gas as an onsite fuel source, using the gas for another useful purpose that a purchased fuel, chemical feedstock, or raw material would serve, or reinjecting it into the well or into another well.”⁸ Too often, operators choose to flare associated gas at oil wells instead of capturing it because they have no incentive to do otherwise.⁹ A study by TCS and the Environmental Defense Fund found that oil and gas companies flared \$274 million worth of natural gas (87.5 Bcf) on federal and tribal lands in 2019 alone.¹⁰

Requiring operators to demonstrate no feasible alternatives to flaring is crucial to prevent unnecessary methane waste. Adding a fifth criterion to demonstrate that flaring is the last resort is consistent with requirements included in the EPA’s final rule “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review” (NSPS OOOOb/EG OOOOc). Under NSPS OOOOb/EG OOOOc, operators of existing sources may receive an infeasibility exemption from flaring restrictions by documenting and certifying that routing the associated gas to a sales line, using it as onsite fuel or for another beneficial purpose, or injecting/reinjecting it are technically infeasible.

The 3rd criterion for the waste emissions charge permitting delay exemption under the proposed rule requires that exempted emissions comply with all applicable local, state, and federal regulations regarding flaring emissions. This will include the emission guidelines for existing sources established in the final NSPS OOOOb/EG OOOOc that states must follow in developing and implementing state plans to establish performance standards to limit GHG emissions from existing sources. However, EG OOOOc gives states two years to develop and submit their state implementation plans and another three years from the submissions deadline for existing sources to comply. Therefore, operators will have five years during which they may be eligible for the permitting delay exemption but will only be required to rely on a patchwork of inconsistent state regulations that precede the EPA’s EG OOOOc. Imposing a similar requirement for operators to demonstrate flaring is the last resort under the waste emissions charge permitting delay exemption will provide an additional safeguard for taxpayers until EG OOOOc state implementation plans are finalized.

To protect taxpayers from wasteful flaring practices, TCS urges the EPA to implement a similar or higher standard for evaluating the infeasibility of alternative courses of actions in the 5th criterion as the EPA will require states to use in evaluating the infeasibility exemption for flaring from existing

⁸ EPA, “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” March 2024. <https://www.federalregister.gov/documents/2024/03/08/2024-00366/standards-of-performance-for-new-reconstructed-and-modified-sources-and-emissions-guidelines-for>

⁹ Taxpayers for Common Sense, “Gas Giveaways II: Methane Waste on Federal Lands is Business as Usual,” August 2022. <https://www.taxpayer.net/energy-natural-resources/gas-giveaways-ii-methane-waste-on-federal-lands-is-business-as-usual/>

¹⁰ Olivia Griot et. al., “Onshore Natural Gas Operations On Federal and Tribal Lands in the United States: Analysis of Emissions and Lost Revenue,” Jan. 20, 2023. (“Synapse”) https://www.taxpayer.net/wp-content/uploads/2023/01/EDF-TCS_Public_Lands_Analysis.pdf

sources under NSPS OOOOb/EG OOOOc. In the final NSPS OOOOb/EG OOOOc rule, the EPA expects documentation of infeasibility “must show clear evidence that the owner and operator has conducted due diligence to understand the situations where the solution is being successfully utilized and a demonstration of why it is not feasible at their site.” TCS urges the EPA to hold operators seeking the permitting delay exemption to a similar or higher standard.

Additionally, under NSPS OOOOb/EG OOOOc, the infeasibility determination must be certified by a professional engineer or other qualified personnel and any qualified flaring must reduce methane by 95.0 percent. TCS urges the EPA to implement both of these requirements – certification by a professional engineer or other qualified personnel and 95.0 percent emissions reductions during qualifying flaring events – in the 5th criterion for the permitting delay exemption. Alignment between these two policies would create regulatory consistency for industry and best minimize the wasteful practice of flaring.

D. Limit Abuse of Regulatory Compliance Exemption

Under the proposed rule, compliance with the EPA’s “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review” (NSPS OOOOb/EG OOOOc) would exempt facilities from the waste emissions charge. We endorse the NSPS OOOOb/EG OOOOc final rule for its comprehensive approach to addressing methane waste from both new and existing sources, especially its focus on curbing the wasteful practice of routine flaring of associate gas.¹¹ To prevent undermining the objectives of NSPS OOOOb/EG OOOOc and the waste emissions charge, TCS advises that the EPA take all necessary precautions and measures to limit abuse of the regulatory compliance exemption.

It is crucial for the EPA to strictly monitor regulatory compliance with NSPS OOOOb/EG OOOOc among facilities seeking the waste emission charge regulatory exemption. As the EPA has proposed, facilities must be required to maintain strict compliance with NSPS OOOOb/EG OOOOc in order to be eligible for the exemption. For example, NSPS OOOOb/EG OOOOc, amongst other requirements, established the Super Emitter Response Program, which requires facilities to properly investigate super emitter events within 5 days when identified by third parties. The Super Emitter Response Program plays a vital role in effectively identifying, stopping, and reporting disproportionately large emission events that significantly contribute to total methane emissions from the oil and gas sector. Compliance with the Super Emitter Response Program, as well as all other regulatory requirements established by NSPS OOOOb/EG OOOOc, is essential to minimize methane emissions.

Under the proposed waste emissions charge rule, the regulatory compliance exemption can only become available once state plans required by the NSPS OOOOb/EG OOOOc final rule have been implemented in all states with WEC-applicable facilities. TCS agrees with the EPA’s interpretation

¹¹ Taxpayers for Common Sense, “TCS Comments on EPA Supplemental Proposal on Methane,” February 2023. <https://www.taxpayer.net/energy-natural-resources/tcs-comments-on-epa-supplemental-proposal-on-methane/>

of Congressional intent, allowing the regulatory exemption once the final requirements are approved and in effect in all states with WEC-applicable facilities.

The regulatory compliance exemption, under the current proposed rule, becomes effective in the calendar year during which an eligible facility meets the requirements for the regulatory compliance exemption—so a facility meeting all requirements in December 2027 would be exempt from the fee for all of 2027. TCS is concerned that this approach allows facilities to receive an exemption for methane waste that occurred prior to meeting regulatory compliance, which is contrary to the intent of the methane emissions charge. TCS supports an alternative approach where the regulatory compliance exemption becomes effective for eligible facilities in the next calendar year after all prerequisites are met. This method ensures a fair and balanced application of the exemption, preventing the exemption of emissions prior to meeting regulatory compliance. TCS does not support an alternative approach that would apply the regulatory exemption for a portion of calendar year based on the time of meeting regulatory compliance through prorating of reported emissions. Such an approach would put unnecessary administrative burden on the EPA and divert agency resources from other important aspects of the methane emissions charge implementation.

TCS expresses concern that the regulatory compliance exemption might apply to all emissions within an eligible facility, particularly regarding those emissions not regulated under CAA section 111(b) and (d). We urge the EPA to explore strategies to limit emissions from sources outside CAA section 111(b) and (d) under the regulatory compliance exemption. Despite the challenges, finding a balance that maintains the exemption's effectiveness without compromising environmental standards is essential.

E. Ensure Proper Well Closure

TCS recognizes that allowing for exemptions for permanently shut-in and plugged wells is consistent with Congressional mandate. However, to protect taxpayers from liabilities, TCS urges the EPA to enforce stricter requirements for full and proper reclamation that would minimize fugitive emissions after closure. Methane leaks can still occur from permanently shut-in and plugged wells. The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks indicates that abandoned and plugged oil and gas wells emitted 0.3 Bcf of methane in 2022.¹² The EPA should mandate post-closure monitoring to ensure that well closures significantly reduce methane emissions.

TCS opposes allowing facilities to claim the shut-in and plugged well exemption for 2024 emissions (reported in 2025) using an estimated percentage. We insist that the EPA require well-level data for onshore wells from entities seeking the exemption in 2024—data that will be mandatory for EPA reporting in 2025 and beyond under the proposed “Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems” rule.

¹² Conversion calculated with EPA Updated Coal Mine Methane Units Converter. Source: EPA, “Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022”, <https://www.epa.gov/ghgemissions/draft-inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022>

Conclusion

As taxpayer advocates, we stress the importance of a fair and effective implementation of the Waste Emissions Charge. We believe a robust final rule will not unduly burden the industry. The proposed rule targets a small number of large facilities and a limited volume of emissions. According to 2021 methane emissions data, the EPA estimates that the rule would affect only 12 percent of national methane emissions from petroleum and natural gas systems. Moreover, the industry already employs various cost-effective technologies that can help operators avoid the fee. Additionally, Congress provided \$1.55 billion which will help facilities reduce current emissions by innovating and deploying new technologies.

The proposed Waste Emissions Charge would also generate valuable revenue for federal taxpayers. The EPA estimates that the fee will generate \$2.3 billion in revenue between 2024 and 2035.

TCS welcomes the proposed rule as an opportunity to address the longstanding, wasteful practice of methane emissions during oil and natural gas development. Taxpayers deserve energy policy that ensures a fair return from the development of taxpayer-owned resources without imposing long-term liabilities.