WESTERN ENERGY ALLIANCE

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March 26, 2024

Mr. Shaun Ragnauth
U.S. Environmental Protection Agency
EPA Docket Center
Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Waste Emissions Charge for Petroleum and Natural Gas Systems EPA–HQ–OAR–2023–0434

Dear Mr. Ragnauth:

Western Energy Alliance appreciates the opportunity to provide constructive comments EPA's proposal to interpret and implement the Waste Emissions Charge (WEC) for Petroleum and Natural Gas Systems as directed under the Inflation Reduction Act (IRA). While the language in the IRA is relatively straightforward, EPA has advanced interpretations of provisions that at each step of the way land on the side of inflicting the most harm on Alliance members and the oil and natural gas industry. The interpretations challenged in this letter not only seemingly prioritize harm on the industry, but also stand in opposition to the plain language of the statute itself or in contrast to EPA's own descriptions of the intent of the statute, and at times in contrast with both. Further, EPA seems to be interpreting the rule to maximize the fee collected, when a more prudent regulatory interpretation would be one that would maximize the emissions reduction and environmental benefit associated with the rulemaking. EPA has the burden of promulgating rules and regulation to implement statute in such a way that is in harmony with the statute itself, but instead in this rulemaking, EPA makes interpretations that are at best arbitrary and capricious and at times manifestly contrary to the statute, as the Alliance will demonstrate in these comments. Further, given the broad national scope of the rulemaking, the significance of the rule's impact to Alliance members and the oil and gas industry more generally, and the political and economic impact the rulemaking will have on the broader market for oil and gas products, EPA should take even more strenuous care to remain faithful to the intent and plain language of the statute.

Western Energy Alliance is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

The Alliance and its members have played an active role in providing data and tools to assist EPA in improving the data collection within EPA's Greenhouse Gas Reporting Program and EPA's Greenhouse Gas Inventory and in helping to shape effective regulation of oil and natural gas producing assets for both methane and VOCs under the

New Source Performance Standards and the National Emissions Standards for Hazardous Air Pollutants. The Alliance has consistently given constructive feedback to EPA on how to improve regulatory provisions, with the intent of satisfying both EPA's goals for emissions reduction, and Alliance members goals of providing safe, reliable, and affordable energy for a world with a growing demand for it.

Executive Summary

There are three key elements of the proposal that the Alliance is challenging within these comments. EPA should rectify these three elements in line with these comments to better align with the intent and plain language of the statute, but this should not be construed as an exhaustive record of the challenges within the current proposal's language. Those three elements are:

1. ***The proposed compliance exemption is contrary to the statute.*** EPA has interpreted the facility definition in such a way as to render language within the statute meaningless, providing for the broadest possible interpretation. This interpretation of facility therefore also makes the compliance exemption nearly impossible to use as no operator would be able to demonstrate zero deviations across an entire reporting basin to claim the exemption. Even if they could demonstrate zero deviations, the risk of certification of zero deviations in the face of potential EPA enforcement renders the exemption too risky to claim. Additionally, EPA interprets language in the statute to require that all iterations of OOOOb, OOOOc, and other implementing plans and regulations should be in place before any compliance exemption could be claimed, even for facilities for which nothing will change after the finalization of OOOOb. This arbitrarily punishes operators who would be subject to the methane requirements in OOOOb, the very regulations referenced in statute, yet unable to claim the regulatory compliance exemption from the WEC that is granted through that compliance.

   Remedy: *EPA should interpret the facility definition in line with the statute, "pursuant to subsections (b) and (d) of section 7411" and use reported data under NSPS OOOOb and OOOOc to exempt individual facility sites from the WEC calculations. EPA should allow for facility operators to claim the exemptions for their respective facilities as they are subject to requirements under OOOOb, OOOOc, or a state implementing plan, whichever enters into force first.*

2. ***Emissions netting should be allowed where there is common ownership or control across all applicable segments.*** EPA has interpreted the emissions netting provision to disadvantage operators across multiple provisions. First by defining "WEC obligated party" as it has done in the proposal, EPA is disallowing parent companies who have sufficient investment oversight of actions of its subsidiaries to reasonably have "ownership" or "control" for the sole purposes of identifying the reporting entity under Part 98 and for netting under WEC, but whose permits are under a subsidiary's name, either through merger,

acquisition, or trade. EPA has done this even though parent company information is reported and certified within the GHGRP, disadvantaging larger operators. Additionally, EPA has interpreted the facility definition in a way that disallows netting of emissions for basins that are below the 25,000-ton threshold, even when those basins are required to be reported due to having been previously over the threshold. This actually may disincentivize operators from minimizing their emissions in certain low-intensity operating basins to avoid losing the ability to net emissions from those assets. Again, these interpretations stand contrary to the statute.

Remedy: *EPA should allow for netting at the parent company level, as reported in the GHGRP, and should allow for voluntary reporting of GHGRP information for basins below the 25,000 ton threshold such that operators can take credit for their performance in the netting provision.*

3. ***EPA should align reporting timelines within the WEC and GHGRP to minimize the burden on operators and EPA.*** The timelines set in the proposal for reporting and payment of the WEC charge are concurrent with the reporting deadline of the GHGRP. EPA does not consider that the reporting deadline for the GHGRP is actually the starting point for the reporting and publication process, which often requires multiple iterations of corrections and clarifications, both at the request of operators identifying new information, and at the request of EPA. By requiring simultaneous reporting the GHGRP and WEC filing and payment WEC, EPA is needlessly increasing the burden on both operators and EPA staff, who will now have to deal with recalculation, refunds, and potentially rectification of both the GHGRP data and the WEC charge. EPA should set a more tailored timeline to avoid all of that burden with no harm to EPA or the environment.

   Remedy: *EPA should amend the deadline for the WEC filing and payment to November 1 of each year to allow time for EPA to identify errors within the GHGRP filing before operators submit their WEC obligation information.*

In addition, the Alliance provides technical comment on the discretionary use of detailed compositional information in lieu of the use of the density of methane, where that information is available.

Detailed Comments

The Proposed Compliance Exemption is Contrary to Law

Within the legislative text of the Clean Air Act (CAA), §7436, as signed into law on August 12, 2022 in IRA, Congress lays out its clear intent to provide operators with an opportunity to exempt their operations from the waste emissions charge through compliance with the EPA regulations under OOOOb and OOOOc. However, within the proposal, EPA contends several indefensible interpretations of the language to effectively render the exemption's use impossible. Administrative agencies have the responsibility to promulgate rules that are not clearly in contrast to the plain language of the statute or that are arbitrary and capricious. The statutory language in question, §7436(f)(6) reads as follows:

> ***(A) In general***
> *Charges shall not be imposed* ***pursuant*** *to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 7411 of this title upon a determination by the Administrator that—*
> > *(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 7411 of this title have been approved and are in effect in all States with respect to the applicable facilities; and*
> > *(ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (86 Fed. Reg. 63110 (November 15, 2021)), if such rule had been finalized and implemented.*
> ***(B) Resumption of charge***
> *If the conditions in clause (i) or (ii) of subparagraph (A) cease to apply after the Administrator has made the determination in that subparagraph, the applicable facility will again be subject to the charge under subsection (c) beginning in the first calendar year in which the conditions in either clause (i) or (ii) of that subparagraph are no longer met.*

The Facility Definition and Applicability Should Align with the Statute

The compliance exemption language in the statute clearly states that ***facilities*** that are "subject to and in compliance with methane emissions requirements ***pursuant to subsections (b) and (d) of section 7411*** of [the Clean Air Act]" (*emphasis added*) should not have charges imposed upon them. While the statutory language creates a definition of applicable facilities for the establishment of the waste emissions threshold and development of WEC applicability, this section (f) makes it clear that for the purposes of the compliance

exemption, the key question is whether the facilities are subject to and in compliance with emission requirements under the relevant sections of the 111(b) and 111(d). EPA interprets that the "applicable facility" definition in CAA §136(d) should instead be applied to this section, but 111(b) and 111(d) requirements are not applied at the Subpart W facility level, which EPA admits, "is an entire site or collection of sites, each of which contains individual emissions sources."[1] By interpreting the language as EPA has, it has rendered the statutory language "***pursuant to subsections (b) and (d) of section 7411***" meaningless, essentially interpreting the statute as though that language isn't there. This is clearly an interpretation contrary to the statute.

EPA claims to have assessed a better, far more straightforward potential interpretation of the exemption, for which EPA would exempt the emissions from individual CAA section 111(b) and (d) sources rather than an entire subpart W facility, but dismisses that interpretation because §136(d) defines applicable facility differently.[2] However, this finding ignores that the statute clearly intends subsections (b) and (d) of section 7411 to be the relevant regulatory framework for assessing applicability. EPA has therefore failed to consider a plain language interpretation of the statute that would be both straightforward to implement and in harmony with EPA's stated understanding of the intent of the WEC.

EPA's interpretation of the intent of the WEC is twofold: first, to act "as a bridge to full implementation of the Final NSPS OOOOb and EG OOOOc by encouraging methane reductions in the near term while state plans are being developed, and thereafter exempting from the charge facilities that are in compliance with the requirements pursuant to the final NSPS OOOOb and EG–OOOOc-implementing state and Federal plans," and second, to "ensure timely implementation of requirements in the final NSPS OOOOb and EG OOOOc-implementing state and Federal plans in order to ensure that those requirements achieve meaningful emissions reductions."[3] Clearly, as EPA stated, the WEC charge is not intended to continue in perpetuity, but instead act as a bridge for facilities to come into compliance with emissions-reducing regulations. Under this understanding of the intent, the responsibility rests on EPA to establish regulations that meaningfully reduce emissions, while operators have the responsibility to follow those regulations to be able to claim an exemption to the WEC.

With respect to the regulations that establish requirements under 7411 (b) and (d), these are typically designed at the industry segment level. For example, subpart J applies to petroleum refineries, subpart R applies to primary lead smelters, and subpart GG to stationary gas turbines. As is relevant for this statute, the "methane emissions requirements" specifically refer to the currently proposed subpart OOOOb under 7411(b) and EG-OOOOc-implementing state and federal plans under 7411(d). The methane emissions requirements under OOOOb apply to the crude oil and natural gas source category, defined as follows:

> *(1) Crude oil production, which includes the well and extends to the point of custody transfer to the crude oil transmission pipeline or any other forms of transportation; and*

[1] Proposed Rule, page 5343
[2] Proposed Rule, page 5343
[3] Proposed Rule, page 5336

> *(2) Natural gas production, processing, transmission, and storage, which include the well and extend to, but do not include, the local distribution company custody transfer station.*

This definition aligns with the title of OOOOb, "Standards of performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced After November 15, 2021."

A much more straightforward and plain language interpretation of the statutory language would be to provide an exemption from the WEC obligation for facilities and equipment that are subject to and in compliance with the OOOOb requirements, once implemented, and then in the future for OOOOc regulated facilities, once implemented. To accomplish this, EPA could use the reporting requirements already present within the OOOOb/c rulemaking. Under §60.5420b of the OOOOb, EPA has included recordkeeping and reporting requirements that are required to establish initial compliance and maintain continuous compliance with the regulation. Under §60.5420b(b), annual reports are due to EPA that contain the company name, "facility site name," and an identification of each affected facility associated with each "facility site name." This reporting includes specific information for each affected facility type, but in short, each affected facility that could be in compliance with OOOOb (or OOOOc in future federal or state implementation plans) is listed and associated with a facility site name. In addition, for each affected facility type, the annual reporting includes information about the deviations from compliance that occurred for each affected facility and each associated facility site name.

To meet the intent of the statute, as interpreted by EPA, and to encourage and incentivize compliance with the methane emissions requirements under the 7411(b) & (d) rulemakings, EPA should provide for WEC exemptions consistent with the reporting requirements under OOOOb and in the future OOOOc-implementing state and federal plans. For each "facility site name" that has associated affected facilities subject to "methane emissions requirements pursuant to subsections (b) and (d) of section 7411," the associated emissions and production from that facility site should be removed from the WEC calculation for the associated WEC applicable facility, so long as those affected facilities did not include any violations of the rule that result in excess emissions. By using this already existing, certified, and enforceable reporting requirement to establish WEC exemption eligibility, EPA could accomplish the intent of the statute, to serve as a bridge to incentivize compliance with and accelerate implementation of the new methane emissions reduction standards.

In contrast, under EPA's proposed interpretation, applying the compliance requirement to include an entire CAA §136(d) facility, operators would be ineligible for a WEC exemption for an entire GHGRP reporting basin with a single deviation under OOOOb. For example, under the OOOOb requirements for a combustion control device whose model is tested under §60.5413b(d), a deviation occurs when a pilot flame is not present for any five-minute time period. While Alliance members and oil and natural gas operators take proactive steps to ensure that pilot lights remain lit, or that pilot lights are relit when they go out, many different situations can lead to a pilot flame not being present for a five-minute period. This could be from something as simple as very strong winds or an equipment malfunction.

Under EPA's current proposed interpretation, this simple deviation, which in almost all cases isn't under the control of the operator and happens at a facility that is not manned, this deviation of a single pilot flame being

absent for five minutes would eliminate the WEC exemption and applicability to thousands of facilities across an entire GHGRP reporting basin. Notwithstanding the error in interpreting "compliance" as meaning no deviations, which will be covered later in this comment, EPA's current interpretation completely invalidates the intent of the exemption. Given there are thousands of scenarios that could result in a deviation at any one of millions of affected facilities, EPA's current interpretation removes any incentive for operators to maintain compliance with the methane emissions requirements under 7411(b) and (d). An operator could, for example, be in compliance with 99.999% of the affected facilities within a GHGRP reporting basin, but report a deviation under a single pneumatic device or flare, and that operator would lose the ability to claim an exemption for the rest of the 99.999% of the facilities that are in compliance. Once that deviation occurs, an operator is no longer incentivized to comply for any of the other facilities within that reporting basin. Instead, the Alliance proposes an interpretation that would continue to incentivize each of the other named facilities in the operator's OOOOb annual report. Our interpretation aligns with EPA's own interpretation of the intent of the exemption, to "encourag[e] methane reductions in the near term" by ensuring continued resources would be applied to all other facilities to maintain compliance with the regulation.

The Exemption Should be Available for OOOOb Applicable Facilities Upon Finalization of the Rule

EPA provides an explanation of its interpretation of the WEC exemptions application to affected facilities with respect to timing that also goes against a plain reading of the statute. Essentially, EPA is proposing that for the purposes of this rulemaking, no WEC exemption will be available to any facility until all states have fully implemented the EG-OOOOc-implementing state or federal plans. This misses the entire intent of the exemption provided for within the rule, and the plain language of the statute itself. Under the statutory language, charges are not to be imposed on facilities that are "subject to and in compliance with methane requirements pursuant to subsections (b) and (d) of section 7411." EPA instead has interpreted this to mean that a facility must be subject to ***all*** methane requirements under subsections (b) and (d). This is not a reasonable interpretation for two main reasons.

First, with respect to the plain language of the statute, any facility that is subject to OOOOb will be subject to and potentially in compliance with the rule upon that rulemaking's finalization, so long as those facilities were constructed or modified after December 6, 2022. In that case, the facilities would also meet the second requirement that, "an equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled 'Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review' (86 Fed. Reg. 63110 (November 15, 2021)), if such rule had been finalized and implemented," specifically because that rulemaking is exactly what those facilities are complying with.

Second, by the very nature of new source performance standards under 7411(b) and their correlative existing source standards under 7411(d), any facility that is in compliance with 7411(b) standards with respect to the OOOOb and OOOOc rulemaking will be in compliance with the 7411(d) standards as well. When those state or federal implementing plans are finalized nothing will change for those facilities subject to OOOOb requirements

either operationally or within their reporting and recordkeeping requirements because there are no requirements within 7411(d) that are more stringent than those found in 7411(b). If there were, that requirement would be in violation of statute. Therefore, any facility that is in compliance with and subject to the OOOOb requirements upon its entering into force should automatically qualify for the WEC exemption, as each of the statutory requirements for the exemption would be met for those facilities.

On the contrary, EPA has instead creatively interpreted the language of the statute to imply that it is not the facilities that are relevant for the WEC exemption, but instead the full finalization of the OOOOb regulations and the state and federal implementing plans for the EG-OOOOc. However, this interpretation ignores the key phrase within the statutory requirement, "methane emissions standards and plans pursuant to subsections (b) and (d) of section 7411 of this title have been approved and are in effect in all States ***with respect to the applicable facilities***" (*emphasis added*). Clearly, the language of the statute intends for charges not to be imposed on facilities that are subject to and in compliance with any of the methane emissions requirements pursuant to subsections (b) and (d) of 7411 of the Clean Air Act so long as there are finalized requirements for those specific facilities. For facilities constructed or modified after December 6, 2022, that would be upon the finalization of OOOOb. For older facilities, that would be upon the finalization of implementing plans for EG OOOOc at each state. however, the question is not whether every single state has implemented a plan, rather the question is "with respect to the applicable facilities" in question, are there methane emissions requirements approved and in effect. EPA's interpretation is unreasonable given the language of the statute.

Beyond that, EPA's interpretation is further unreasonable as the interpretation in this instance creates the least incentive for operators to devote resources to emission reduction. EPA seems to be interpreting the statute to maximize the fee collected, when a more prudent interpretation would be one that maximizes the emissions reduction and environmental benefits associated with the rulemaking. By providing for a WEC exemption for facilities as soon as they are subject to and in compliance with OOOOb, regardless of OOOOc's implementation status, EPA would incentivize operators to devote resources to both compliance and to modifying older facilities to subject them to the new source performance standards, such that they could then be exempted from the WEC. Considering §7436 is intended to be a methane emissions and waste reduction ***incentive program*** for petroleum and natural gas systems, EPA's interpretation for the WEC exemption is unreasonably removing any opportunity for incentives at every step.

One additional way that EPA could incentivize resource allocation towards reduction of emissions would be to reconsider the interpretation of "in compliance with" under §7436(f)(6)(A). EPA has interpreted that any deviation as defined in OOOOb would eliminate an operator's ability to claim the WEC charge exemption. But this is not a necessary or even reasonable interpretation of the statute. For facilities that are reporting under OOOOa, OOOOb, and eventually OOOOc, even as they report deviations, those facilities are still in compliance with the regulation. Reporting of deviations is a mechanism of proper compliance, as is the following of emissions detection requirements and maintenance activities. Instead, EPA should focus on specific violations at facility sites or failure to report deviations as a condition for loss of the WEC exemption. At the very least, EPA should set a threshold by which a facility site would be considered in compliance, such as if 95% of the affected facilities at that facility site

reported zero deviations. This would incentivize and encourage operators to achieve better emissions performance at their facilities, often going beyond what would be required for compliance with regulation.

EPA Should Not Require Certification that Facilities are Not Claiming the WEC Exemption

Finally, notwithstanding EPA's final determination and interpretation of the statute for setting requirements around the WEC exemption, EPA should not require that operators submit a certified report for facilities that are not considered to be in compliance for the purposes of the WEC exemption. If an operator wishes to apply the compliance exemption to the fee, a certified filing is reasonable, but no filing should be required at all if an operator instead is subject to the fee. EPA already requires certified filing of annual reports for all deviations and instances of non-compliance within the OOOOb rules, any requirement that this be made is purely duplicative and unnecessary.

Emissions Netting Should be Allowed Where There is Common Ownership or Control Across All Applicable Segments

Under the current proposal, EPA limits the netting of emissions across sectors to facilities that are listed as the same WEC Obligated Party. EPA defines this WEC Obligated Party as, "the owner or operator as defined in this section for the applicable industry segment as of December 31 of the reporting year. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party shall be a person or entity selected by an agreement binding on each of the owners and operators involved in the transaction, following the provisions of § 99.4(b)." But owner or operator in this section (under 98.238) defines owner or operator as the permit holder for the facility in question: "Onshore petroleum and natural gas production owner or operator means the person or entity who holds the permit to operate petroleum and natural gas wells on the drilling permit or an operating permit where no drilling permit is issued, which operates an onshore petroleum and/or natural gas production facility (as described in § 98.230(a)(2)). Where petroleum and natural gas wells operate without a drilling or operating permit, the person or entity that pays the State or Federal business income taxes is considered the owner or operator." The proposal does allow for the selection of a single owner or operator for the purposes of GHGRP reporting to eliminate double counting of facilities, or multiple operators reporting on the same facility, but there is no requirement under the statute that not that an owner or operator must also be qualified as the permit holder to net emissions under the WEC. Given numerous mergers, acquisitions, and other scenarios, the permit holder for a facility may be a subsidiary of a parent company who both owns and controls the operations but would not be specifically named as the permit holder. For the discussion on why parent companies may have common ownership or control for the purposes of netting under the WEC, the Alliance incorporates by reference the relevant section in the comments submitted by the American Petroleum Institute.

EPA's intent under this definition was to apply the CAA Section 136(f)(4) language requiring that netting be allowed for facilities that are under, "common ownership or control." While EPA seems to be intending for common

ownership to allow for netting, there are many scenarios under the current implementation of the GHGRP where the owner or operator listed in the e-GGRT certificate of representation is different for different facility reports in different basins, but the operations themselves are under common ownership or control. EPA should instead define the WEC obligated party to allow for the parent company, as reported and certified under the GHGRP, to be used as the WEC obligated party. In this way, facilities that are under common ownership or control would be allowed to net emissions across industry segments, as intended by the proposed rule and the legislation.

Further, in allowing for netting of emissions, the statute states clearly that, "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 identified in subsection (d)." This provision within the statute contains no requirement that operators must also be above the 25,000 metric ton of carbon dioxide equivalent for the additional emissions used to net emissions totals, and subsection (d) also does not state that those industry segments are only relevant if above the threshold. Yet EPA within this proposal inserts this requirement into the statute, allowing only for the netting of facilities that are defined as WEC applicable facilities. The Alliance contends that this interpretation is in violation of both the plain language and intent of the statute.

EPA seems to not consider the potential negative unintended consequences of an interpretation that does not allow for netting across all industry segments, but instead only across all WEC applicable facilities. Alliance members are typically improving the design of facilities to reduce more emissions and to improve environmental performance year over year. Eventually, operators, simply by improving their designs and operational practices, may be able to reduce their emissions for a given reporting basin below the 25,000-ton threshold, especially in high producing assets. However, for operators that do so but that also have other basins that report above the 25,000-ton threshold, removing a high-producing asset from the base calculation for the WEC by reducing its emissions below the threshold may actually represent a significant increase in WEC obligation for that operator.

For example, if an operator has emissions in basin A of 8,000 tons above the threshold, and emissions in basin B of 8,000 tons below the threshold, but both are subject to reporting to the GHGRP as above the 25,000-ton level, that operator is significantly disincentivized to reduce emissions from basin B to the point where it is no longer over 25,000 total tons, as doing so would immediately impose a fee of $12,000,000 in 2026 and beyond.

To counter this negative incentive and to allow for netting as the statute clearly intends, "within and across all applicable segments identified in section (d)," EPA should allow operators to voluntarily report emissions information through either the WEC filing or the GHGRP for basins that are below the 25,000-ton threshold for the purposes of netting their WEC obligation. At a minimum, given that the GHGRP requires reporting for five years after mandatory reporting for basins that have fallen below the 25,000-ton threshold, EPA should allow for the netting of those reported emissions as well.

The Rulemaking Should Better Synergize with Timelines Within the GHGRP

Under the current proposal, EPA requires that the WEC filing and WEC payments be submitted no later than March 31 of the year following each reporting year, with revisions allowed until November 1 of the same year. However, this reporting deadline is exactly the same as the reporting deadline for the GHGRP data that is used to calculate the WEC obligation. While this intuitively seems like an appropriate timeline for requiring payment, the reality for most operators is that the finalization of the GHGRP report each year requires significant resources in terms of employee time and coordination. Most of the calculations within the WEC are also likely to be performed by those same employees that have the best knowledge of the data submitted to the GHGRP. The Alliance suggests a delay between the finalization of the GHGRP data submission such that payment and data filing would be due after the data for each year, which would likely result in less significant revisions for three main reasons.

First, given the resource stress already placed upon operator's employees in finalizing the GHGRP data, using the same deadline for the WEC filing further constrains those resources, with no real benefit to either EPA or the operator. By allowing additional time to finalize the WEC obligation filing and payment, EPA would reduce the currently unnecessary burden on operators. Second, the processing of payments, especially in what could be significant amounts for some operators, typically requires coordination with entirely separate groups within operators' organizations. Payment of contractors, taxes, and other payments are not typically handled within the environmental teams that are working on the GHGRP, and there are significant recordkeeping and reporting requirements for businesses and their accounting practices. The current EPA proposal does not address or even seem to consider those impacts.

By providing a delay between the two deadlines, operators can finalize their GHGRP data, rectify any data inconsistencies or errors identified by either the operator or EPA, then finalize their WEC obligation and go through the process of making payment available for the WEC. Finally, allowing a delay between the two deadlines gives EPA and the operators the opportunity to evaluate and correct any errors in the GHGRP data prior to processing the WEC obligation and the payment. This reduces the paperwork burden on EPA and the operators by reducing the possibility of back-and-forth revision of filings within the GHGRP and the WEC simultaneously. EPA should make the deadline for the WEC filing and payment November 1 of each year to allow time for EPA to identify errors within the GHGRP filing before operators submit their WEC obligation information.

Finally, as a more technical side note, the rule should align recordkeeping timelines with the GHGRP, as maintaining records for the WEC separately from the underlying data within the GHGRP is not reasonable. Any maintenance of WEC records that goes beyond the recordkeeping requirements in the GHGRP would essentially mandate maintenance of the underlying GHGRP data or risk rendering the recordkeeping of the WEC obligation data meaningless.

Threshold Calculations Should Allow for the Use of Compositional Information

EPA proposes within the rule to use the density of methane multiplied by the volumetric gas throughput at facilities to calculate the WEC threshold for fee calculations. In the majority of situations, this calculation using the density of methane should result in a reasonably accurate accounting of methane that is included in the throughput of those facilities. However, in some situations, produced gas may have a much higher or lower density than the default value for the density of methane. EPA should consider allowing the use of compositional information already reported under the GHGRP to more accurately calculate the waste emissions threshold, instead of a default value for the density of methane.

Conclusion

The Alliance respectfully submits these constructive comments for consideration by EPA. We believe our recommendations would correct some of the conflicts with the clear statutory language that currently render the proposed rule arbitrary and capricious. Should EPA require clarification or assistance in developing a proposal that meets the intent and direction of the statute in line with these comments, the Alliance and its members offer their support.

Sincerely,

Kathleen M. Sgamma
President