March 26, 2024

The Honorable Michael S. Regan
Environmental Protection Agency
Pennsylvania Avenue NW
Washington DC 20460

Re: Comments on EPA's Waste Emissions Charge for Petroleum and Natural Gas Systems at 89 Fed. Reg. 5318 (January 26, 2024) (the "Proposed Rule" or "WEC")

Docket ID No. EPA–HQ–OAR–2023–0434
Submitted via e-filing

Dear Administrator Regan:

The Permian Basin Petroleum Association ("PBPA") is the largest regional oil and gas association in the United States. We represent the men and women who work in the oil and gas industry in the Permian Basin of West Texas and southeastern New Mexico. The Permian Basin is the largest inland oil and gas reservoir and the largest oil and gas producing region in the world. PBPA consists of the largest producers as well as the smallest operators in the Permian Basin. Part of PBPA's mission is to promote environmentally conscious operations and sustainable economic profitability among all our members, large and small. Because PBPA's members will be directly impacted by this Proposed Rule, if finalized, we are submitting these comments to convey our concerns and needed revisions.

INTRODUCTION

PBPA membership understands there are Congressional requirements placed on the Environmental Protection Agency ("EPA") to draft a rule implementing the Inflation Reduction Act ("IRA") as to, what EPA is now calling, the WEC. However, such an implementation of the IRA should reflect the statutory language and Congressional intent of the IRA. After a review of the Proposed Rule, we find numerous areas that do not accomplish this end.

As described in more detail below in these comments, PBPA believes there are unnecessary, and hopefully unintended, complications that will result from the Proposed Rule if implemented as drafted. For instance, there needs to be clarity around netting, adjustments to certain proposed time periods, exemptions and standards that are attainable under real world circumstances, as well as other changes that are necessary, and recommended herein, to actually effectuate the purposes of the IRA in the WEC.

PBPA appreciates this opportunity to comment on EPA's Proposed Rule. These and other comments are further detailed below. To better align with the IRA, EPA's expressed aim and to address the concerns detailed herein, PBPA requests that the EPA revise the Proposed Rule as described.

DISCUSSION

EPA should clarify that netting is allowed across various subsidiaries within the same parent company.

In some instances, there may be a corporate structure that acquires a company or asset as a wholly or partially owned subsidiary. The preamble of the proposal suggests that EPA's intention is to align reporting requirements under 40 CFR 98, Subpart W, both in terms of timing and responsibility. Specifically, the aim is to prevent situations where a parent company, not the designated Greenhouse Gas Reporting Program ("GHGRP") reporter for a particular asset, attempts to offset its methane fee obligations by spreading costs across various distributed ownership interests, complicating fee calculation, responsibility, and auditability. However, EPA likely did not intend for discrepancies in naming conventions due to subsidiary/parent company structuring to limit aggregation of WEC applicable facilities into a single WEC filing by a single WEC obligated party. This seems especially unlikely to be EPA's intent for situations where the parent company owns the designated representative company. Industry recommends that EPA clarify that a parent company may function as the WEC obligated party for the WEC applicable facilities of its subsidiaries.

Netting should be allowed at parent company level across all applicable segments and facilities. Allowing netting at the parent company level seems to meet the intent of the IRA by allowing companies to attack the most cost-effective emissions reductions across their portfolios. The limitation of netting at the permit/operating company level disincentives operators from seeking additional reductions in a basin once they are below the WEC threshold.

EPA's definition of "owner" is overly broad and could be interpreted to include equity interest partners. Most owners are considered "non-op" and do not have operational control of the facilities nor the ability to reduce emissions. EPA's attempt to saddle these "non-op" owners with potential WEC liability is inappropriate and conflicts with decades of financial practice within the industry.

Netting should be allowed for <u>all</u> facilities and should not be restricted to just WEC applicable facilities, especially when an owner or operator does not seek the "regulatory compliance exclusion." This should include facilities that are eligible for exemptions.

EPA should authorize utilization of an alternate designated representative or shorten the period between identification of a designated representative and the first submission of a WEC filing.

The proposal requires that a designated representative must submit a complete certificate of representation at least 60 days prior to the submission of the first WEC filing made by the WEC obligated party. In any workplace, regardless of how dynamic, it is at least possible that an employee serving as a designated representative could leave their position at a company before the end of a 60 day time period. It is recommended that either such time period be shortened or the ability to designate an alternate designated representative, at the time a complete certificate of representation is submitted, be allowed.

Exemptions

- **Exemptions for regulatory compliance under the Clean Air Act ("CAA") 111 programs should be practically achievable.**

  As written, exemptions requiring a state implementation plan in place in every state within the U.S.A., as compared to having a plan in place in every state in which a WEC obligated party is

operating, renders the exemptions moot. Congress could not have intended to have instructed EPA to include such exemptions with the intent that the State Implementation Plan ("SIP") implementation in non-oil and gas producing states would impede such exemptions from ever potentially applying anywhere. EPA should amend the proposed rule to indicate that the Administrator has the discretion to streamline the determinations of equivalency for CAA 111 rules into a single agency action and that a WEC exemption for a facility subject to existing source standards under part 60 subpart OOOOc can be applied on a state-by-state basis. Congress clearly provided these exemptions to incentivize states where oil and gas activities occur to expedite state implementation plans and rulemaking for existing sources, thus driving down emissions in the major oil and gas producing regions quicker than the provided rulemaking timeline for existing sources. States with little (or no) oil and gas activity have scant incentive to expedite those rules and will completely undermine emissions reduction progress.

- **Zero violation/deviation or non-compliance for all the facilities in a basin is an unachievable standard and impossible to meet.**

  Further, a facility under 40 CFR 98, Subpart W is not a traditional facility but a basin. Given this setup, if an operator has a single deviation at one location, the entire basin would not qualify for the regulatory exemption. A requirement that eliminates an entire basin due to one leaking thief hatch or unlit pilot does not consider the intent of the legislation, which was to allow an exemption for companies actively seeking to comply. This is an unreasonable criterion, especially when coupled with EPA's assumption that once OOOOb/c is implemented that most companies will be exempt. We read the requirement as if the self-reported and corrected deviations will disqualify the entire reported Subpart W facility to claim an exemption. We recommend this be limited to fully adjudicated violations and not include deviations. If not, this, as proposed, in combination with the low threshold that EPA has set for reporting deviation under NSPS OOOOb and OOOOc rules, will make this exemption impossible to achieve. NSPS OOOOb, as written, requires deviations for self-identified and fixed issues. An example would be that any leak in the closed vent system must be reported as a deviation. Another example is that any outage of flame is a deviation even if the flare relights within seconds of recording the absence of flame.

  EPA's final OOOOb rule has a very low threshold to trigger modifications. The oil and gas industry has been building centralized tank batteries to minimize environmental footprint. These consolidated facilities, which benefit the environment by minimizing the impacts, will trigger NSPS OOOOb. In addition to disincentivizing these projects, by setting a very low threshold for modification under NSPS OOOOb, the EPA underestimated the number of facilities that will be subject to NSPS OOOOb. This miscalculation by EPA along with single deviation at a basin level disqualifying for exemption, would make these exemptions effectively unclaimable. For example, one identifiable fugitive emissions leak in a cover and closed vent system at one facility would be considered a deviation and potential violation of OOOOb, resulting in losing the potential WEC regulatory compliance exemption for the entire basin. This in fact is contrary to the congressional intent to incentivize compliance with the rule. We believe that deviations should not be treated as violations for this rule to qualify for an exemption. However, if EPA chooses to continue to treat deviations as violations for this rule, we believe a more reasonable approach for EPA would be to allow for exemptions for individual facilities (in the traditional definition of a facility and <u>not</u> a basin or sub-basin as 40 CFR 98, Subpart W defines a facility) to claim the exemption.

- Exemptions for plugged wells should allow for netting of removed sources such as pneumatic valves or any equipment associated with that well or group of wells.

- EPA has stated that only flaring emissions can be exempted. When pipeline construction is delayed, it can have a cascading effect for emissions from several sources. EPA should allow incremental

emissions, associated with delay in pipeline construction, should all sources be exempted.

- EPA requires compliance with state and local regulations to claim an exemption. EPA's threshold for unreasonableness for permit approval of 30-42 months is unreasonably long and does not incorporate legislative intent of not penalizing the industry due to government inefficiencies in permitting additional takeaway capacity. The IRA intended to fast track the approval process for adding additional takeaway capacity as soon as it is needed to support oil and gas growth with minimal flaring and not support the status quo, as found in the Proposed Rule. Wells often decline significantly in three years and allowing three years to start the construction may exacerbate the emissions issues which is contrary to the stated goal of the IRA.

- Reporting to demonstrate compliance with NSPS OOOOb and OOOOc should not require additional reporting beyond the annual report that is reported under NSPS OOOOb and OOOOc. EPA has access to this report, along with certification, and no additional reporting should be needed.

Define the WEC Facility Methane Emissions as the portion of the emissions attributable to the natural gas sent to sales or facility throughput.

CAA section 136(c) provides that the Administrator should "impose and collect a charge *on methane emissions that exceed an applicable waste emissions threshold* [emphasis added] under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, regardless of the reporting threshold under that subpart," and subsection (f) defines such a threshold as a "charge on the *reported metric tons of methane emissions from such facility that exceed (A) 0.20 percent of the natural gas sent to sale from such facility; or (B) 10 metric tons of methane per million barrels of oil sent to sale from such facility* [emphasis added], if such facility sent no natural gas to sale" or, similarly for nonproduction petroleum and natural gas systems, a "*charge on the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility* [emphasis added]."

A plain reading of CAA sections 136(c) and (f) indicate that the methane emissions subject to evaluation against the Waste Emission Threshold for a segment are those emissions attributable to the listed product (e.g., natural gas sent to sale from a natural gas production facility, oil from an oil producing facility, natural gas sent to sale through a nonproduction petroleum and natural gas system). EPA, however, augmented the statutory meaning by adding the word "and" when it proposed "to interpret 'reported metric tons of methane emissions' to mean all reported methane emissions from a facility, as reported under subpart W."

Industry believes the better interpretation of the WEC Facility Methane Emissions should be those emissions reported pursuant to subpart W, attributable to the relevant product in the segment Waste Emissions Threshold. As a result, in this calculation, the quantity of methane emissions in the numerator should reflect the total methane emissions attributable to the quantity of natural gas sent for sale represented in the denominator. This is addressed in the Natural Gas Sustainability Initiative (NGSI) protocol (https://www.eei.org/issues-and-policy/NGSI) on an energy allocation basis by multiplying the methane emissions by a gas ratio, which is defined as the energy content of the produced gas divided by the energy content of total produced hydrocarbons (values already reported through subpart W filings) as shown below:

$$Intensity\ IRA = \frac{CH_4\ emissions * Gas\ ratio}{sales\ natural\ gas}$$, where

Gas ratio = energy content of produced gas / energy content of total hydrocarbons

Allen and coworkers (Allen, David T.; Chen, Qining; Dunn, Jennifer B. "Consistent Metrics Needed for Quantifying Methane Emissions from Upstream Oil and Gas Operations." Environ. Sci. Technol. Lett., 2021, 8, 4, 345-349) illustrated the importance of including emissions allocation on an energy basis, even within a single basin. In that work, the Eagle Ford Shale is analyzed across 12 subregions, ranging from primarily oil production to primarily dry gas production. When energy allocation is considered, similar methane intensities are observed across all subregions, but when all emissions are attributed solely to the natural gas portion of production (as is inherent in a metric lacking product allocation), the oil producing regions were not accurately reflected by as much as an order of magnitude with an unallocated methane intensity metric. This is because without energy allocation, there is an inherently inaccurate and biased assessment - the methane associated with the total fluids production is included in the numerator (methane associated with oil AND gas production) but only the gas portion of the total sold is used in the denominator.

The language in the IRA aims at minimizing waste. However, if an operator were required to apply a purely natural gas-based waste emissions threshold for a liquids production facility, that operator would be irrationally incentivized to waste via flaring (not sell) all the associated gas, simply to avoid the methane emissions charge associated with the oil production being attributed exclusively to the small volume of gas sent to sales. This makes no sense.

An additional irrational outcome arises from EPA's addition of the word "all" to its interpretation of relevant Facility Methane emissions, which relies on a presumption that US oil and natural gas liquids (NGLs) have a methane intensity of zero. A similar presumption was identified in the preamble, where the agency discusses gathering and boosting and processing facilities with zero reported throughput. EPA correctly identifies that there are a small number of gathering and boosting and natural gas processing facilities that emit methane and report under subpart W, but do not send gas to sale. EPA then states that its current proposed implementation of the statute would mean that these facilities, which generally exclusively, or almost exclusively, handle natural gas liquids (NGLs) or oil, with no reported throughput of natural gas to sales would be considered to be exceeding the waste emissions threshold for any and all reported emissions. EPA specifically solicits comment on this issue. Applying an energy allocation basis would additionally resolve this issue by allocating emissions based on energy of products received by the facility, where these volumes are already reported to the GHGRP through subpart W.

WEC threshold calculations should provide an option for using gas composition analysis instead of the default density of methane.

To calculate the facility WEC threshold, the proposed rule uses the density of methane multiplied by the volumetric gas sales or throughput. This is a feasible approach for quantifying the mass of methane in the facility gas sales or throughput. But, in some cases, produced gas may have a significantly different density than the default density of methane. So, an option to use gas composition analysis to more accurately calculate the facility WEC threshold, in such cases, should be provided. This approach is also aligned with the intent of the IRA that the WEC is to be based on empirical data.

WEC Filings and Corrections to WEC Filings and WEC Obligations:

- WEC Fee should not be due on March 31st, the same date the Subpart W report is due. The fee should only be due on November 1st and EPA should be obligated to complete their review of Subpart W filing by the fee due date.

- Errors in the calculations should be allowed to be corrected until November 1st of each calendar year for the previous calendar year's emissions. Correcting errors for acquired facilities should not be the responsibility of subsequent owner and should not result in enforcement action or penalty for the subsequent owner or operator.

- Only the operator of the facility should be responsible for WEC charges and not all owners. EPA has never required agreement amongst all owners for other regulatory fees and this charge is no different. Currently it appears that for WEC applicable facilities that have more than one owner or operator, the WEC obligated party is an owner or operator selected by a binding agreement among the owners and operators of the WEC applicable facility. Currently the rule reads as the Owner or Operator of a WEC Applicable facility on December 31st of the reporting year is the responsible party for paying the fee for the entire year. Instead, each owner or operator of the WEC applicable facility should be responsible for reporting emissions and making payment of WEC Charge until the date of transfer of the WEC Applicable Facility's ownership to a subsequent owner. Subsequent owners do not have operational control of the facility until the date of transfer of ownership and it is unfair for the subsequent owner to be responsible for reporting and WEC charges. Subsequent owners or operators should only be responsible for charges from the date of transfer of ownership and only for the period of the ownership during the reporting period. EPA thinks that reporting emissions by each operator and performing the WEC filing will be complicated for the calendar year when the ownership is transferred if reporting is separated. On the contrary, each operator will clearly understand this obligation and ensure accurate data is used to report the inventory and WEC filing. In addition, due to ambiguity of some of the Subpart W calculations, different operators may calculate emissions differently. If EPA does choose to hold the new owner/operator liable for the previous owner's emissions, then a longer duration should be provided (up to a year) for the new owner to assess historical calculations and make corrections.

- Designated representative filing shouldn't be needed annually unless WEC Obligated Party has changed the designated representative. Further there is a provision in the rule, as proposed, that requires designated representative filing within 90 days of such a change. Similarly, if there is a change in designated representative, the obligated party should be required to file again but no annual filing should be required. It is unclear if this is needed annually.

- A daily interest rate late charge for corrected by November 1st is excessive. Interest charges should only apply to any corrections after November 1st for the previous reporting year. If EPA desires to charge interest charges, then EPA should be obligated to complete their assessment of filings 90 days before the WEC due date. Historically, EPA has requested clarifications up to three years post Subpart W filings. Interest should not be accrued due to a lack of timely review on EPA's part.

- EPA should resolve any unverified WEC filing matters with the operator and not demand a third party audit at the WEC Obligated Party's expense. EPA is provided with Part 98 Filings, Exemption Documentations and WEC filings. EPA has all the information it needs and has the right to request additional information where needed. Any third party audit is unnecessary and burdensome to the industry. Further, this is the EPA outsourcing its review.

- EPA should commit to review and approve any claims for refund of overpaid WEC and make the refund available in a reasonable amount of time. EPA provides the industry 45 days to correct any WEC filing discrepancies. It is reasonable to expect the same 45 days for EPA to approve the refund request and make the refund available to the WEC Obligated Parties. In all cases, EPA must commit to completing all reviews and approvals and make payments no later than November 1st.

CONCLUSION

PBPA acknowledges that EPA is statutorily required to implement a vehicle like the WEC to satisfy requirements of the IRA, but hopes the above concerns are addressed and recommendations are incorporated into the final WEC so that the rule is effective without being overburdensome, conflicting, or unworkable. On behalf of our members, we respectfully submit these comments to the EPA and request they be taken into consideration in the development of the final rule. PBPA appreciates your time in reviewing and considering these comments.

Regards,

Ben Shepperd
President
Permian Basin Petroleum Association