



February 9, 2024

The Honorable Mike Johnson
Speaker of the House
U.S House of Representatives
Washington, D.C. 20510

The Honorable Chuck Schumer
Senate Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Hakeem Jeffries
House Minority Leader
U.S. House of Representatives
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
U.S. Senate
Washington, D.C. 20510

Dear Mr. Speaker, Leader Jeffries, Leader Schumer, and Leader McConnell:

This letter is submitted on behalf of the organizations listed below. These organizations want to express serious concerns regarding the impact of the Environmental Protection Agency's (EPA) new methane emissions regulations (Subparts OOOOb and OOOOc) and the Methane Emissions Reduction Program (Methane Tax) on oil and natural gas marginal well owners. Both actions threaten marginal wells continued operations by creating unfair, unworkable, and uneconomic regulations. These small business energy producers need assistance to find a regulatory or legislative solution to mitigate these threats.

Marginal Wells Defined

Marginal wells are defined as wells that produce no more than 15 barrels/day of oil equivalent (90 mcf/d of natural gas). Nationally, according to the Energy Information Administration, these wells average about 2 barrels/day and 18 mcf/d. There are about 750,000 of these small wells divided roughly equally between oil and natural gas wells. Significantly, about 600,000 of these wells produce no more than 6 boe/d and about 300,000 of these wells produce no more than one boe/d. Operations of these wells differ from large wells. Many do not operate continuously, particularly as their production declines. Wells may operate on timers such that they only pump a few hours per day; others may only operate a few days or one day per week. The 1994 National Petroleum Council Marginal Wells study observed that wells in the one boe/d or less category were dominated by these intermittent operations.

Regulatory Applicability to Marginal Wells

There have been limited emissions data collected focused on marginal wells, and very few studies have included onsite measurements. The most notable effort was funded by the Department of Energy, Quantification of Methane Emissions from Marginal (Small Producing) Oil and Gas Wells. This study produced key findings that are important regarding the potential regulatory burdens being imposed by EPA.

1. Approximately ten percent of the wells accounted for ninety percent of emissions.
2. Emissions from wells below 6 boe/d rarely exceeded the three tons/year threshold of methane emissions that EPA proposed as the cutoff for Leak Detection and Repair (LDAR) regulations in its 2021 Subpart OOOOc proposal.
3. The predominant sources of emissions were from tanks (open thief hatches, poor seals), faulty pneumatic controllers, and inadvertently opened vents.

These results demonstrate that targeted actions to reduce emissions from these few sources from larger marginal wells would manage the meaningful environmental impacts of these wells. Never-the-less, EPA continues to fail to use common sense solutions.

Subparts OOOOb and OOOOc

Subpart OOOOc is intended to define Emissions Guidelines (EG) for existing sources of methane emissions from oil and natural gas facilities. For oil and natural gas production operations, there are about one million wells that would be affected, including the 750,000 marginal wells described previously. States are supposed to take these EG and develop a plan to implement them. While the Clean Air Act (CAA) provides significant flexibility for states to develop their own regulations, EPA wrote this regulation to limit that flexibility. The CAA rightly recognizes that each state has unique situations that require flexibility to ensure a regulation is reasonably applied, but EPA is attempting to prevent its use. If states are forced to adopt the EG without changes, there will be significant consequences for marginal wells. Earth Science Systems evaluated the impact of EPA's regulations and concluded that 30 percent of existing wells would be shut down; these are likely the 300,000 wells producing one boe/d or less. Another report, by Enverus, estimates that 34 percent of existing wells would become uneconomic under the new EPA regulations, a conclusion consistent with the Earth Science Systems report.

Four key areas are: (1) LDAR requirements, (2) pneumatic controller regulations and (3) associated gas management, and (4) compliance timeline.

LDAR – EPA divides its LDAR requirements between two approaches: AVO (audio, visual, olfactory) which industry supports for marginal wells and OGI (optical gas imaging) which is far more costly. EPA creates four well type categories and sets different LDAR requirements for each category. The key issue is the difference between requirements for small well sites (quarterly AVO) and large well sites (quarterly OGI and bimonthly AVO). Using EPA's category definitions, the vast majority of wells will fall into the large well site category. At a recent House Energy and Commerce Subcommittee hearing, a producer from Michigan illustrated the challenge his operations face. His company produces primarily oil from 262 well sites averaging about 1.4 barrels/day/well. However, 231 of these well sites will be categorized in the large well site category for LDAR. The cost of quarterly OGI and bimonthly AVO will be prohibitive for marginal well owners.

Pneumatic Controllers—Pneumatic controllers are used at many marginal wells. Because most wells are in remote locations without electricity, they use produced gas from the well site to activate the controllers and the gas is discharged to the air. Rather than recognize that these controllers are part of the well site, and the costs of regulation affects the economics of the well, EPA treats them as a separate “facility” which allows the cost benefit analysis to ignore the impacts on the whole well site. Based on its analysis – using some questionable emissions data – EPA's EG requires gas-driven pneumatic controllers to be eliminated. Many states have

required that captured gas be routed to 95 percent emissions control, but EPA rejected this option. Even the feasibility of complying with these requirements for small remote facilities is questionable.

Associated Gas Management—EPA requires that associated gas from marginal oil wells must be captured with very limited exceptions. This gas capture requirement comes with a substantial cost that cannot be absorbed by most marginal well owners. Previous regulations allow for flaring and venting of a de minimis amount of associated gas, but these reasonable options are mostly eliminated under the new rule. EPA ignored the fact that associated gas capture may simply not be feasible for some rural well sites, wrongly forcing their premature closure. As wells age, the volume of associated gas diminishes, wells do not operate continuously, and therefore volume of the gas is too small to be recovered and sold. From the standpoint of EPA’s requirements, intermittent gas cannot operate an incinerator without a supplemental gas supply. Consequently, the EPA requirement would result in the perpetual purchase of supplemental gas to burn continuously to eliminate an amount of methane that has not been shown to be significant.

Compliance Timeline — The EPA compliance timeline is not realistic for marginal well owners. EPA has given states two years to come up with a state plan and then an additional three years for compliance. Even if a reasonable pathway to compliance can be found, there will be roughly 750,000 marginal well owners looking to make the same modifications within three years or less. The potential challenges from permitting, availability of equipment, availability of installers, pipeline siting and construction, and financial limits are tremendous.

This collection of requirements, and others, will result in premature closure of currently producing marginal wells and strain the plugging capabilities of the industry. In its Regulatory Impact Analysis for the Subpart OOOOb regulations and the Subpart OOOOc emissions guidelines, EPA included a specific financial analysis of marginal wells. It concluded:

With the available data and the complexity described, we cannot estimate the impacts of the final regulation on the owners or operators of marginal wells.

Earth Science Systems understands the consequences of Subpart OOOOc. Operators of marginal wells have tried repeatedly to explain to EPA that its regulations under Subpart OOOOc would have profound adverse impacts on these wells. Unfortunately, EPA seems content with not knowing what the impact would be.

The Methane Tax

When Congress enacted the Methane Tax, it did not intend to capture these small business producers within the scope of the new requirements. As Senator Joe Manchin stated in his June 6, 2023, letter to EPA Administrator Regan:

- The statute clearly intends to exempt marginal wells and smaller producers from the fee. EPA must make it clearly understood that those entities not subject to the current Subpart W Greenhouse Gas Reporting Program are not subject to EPA fees under MERP.
- EPA should draw reasonable boundaries around the definition of individual “facilities” (such as pad site, compressor site, or reporting field) for emissions intensity calculations so that aggregations of large amounts of disparate wells and gathering lines does not lead to charging a fee on marginal facilities that Congress intended to exempt or on facilities that have minimal actual emissions.

EPA has failed to address these issues in either its proposed Subpart W revisions or its proposed regulations to implement the tax calculation portions of the requirements.

These issues arise because of the fundamental problems of using Subpart W as the basis for calculating the Methane Tax. Subpart W is a component of the Greenhouse Gas Reporting Program (GHGRP). GHGRP is not a part of the Clean Air Act and EPA created special regulations for its implementation. Among these is a definition of “facility” that is not used anywhere else in regulations and is inconsistent with the concept of “facility” in the Clean Air Act. Essentially, the GHGRP defines a “facility” as all the operations within an American Association of Petroleum Geologists (AAPG) basin. For some basins, this is the entire state. Practically, this process means that all marginal wells in the basin must be added together and treated as if they were one large well.

Consequently, when all these small wells are collectivized, they can result in a calculation of emissions that could make them susceptible to the Methane Tax. It is worsened by changes that EPA is proposing in the components that make up the calculation of Subpart W. First, EPA is proposing to change the Global Warming Potential (GWP) for methane from 25 to 28. This change would mean that, whereas 1000 metric tons of methane would equal the 25,000 metric tons threshold in the current Subpart W, the future 25,000 metric tons threshold would be 893 metric tons of methane, roughly an eleven percent reduction in the threshold that was not considered during the legislative process. Second, EPA’s proposed revisions to Subpart W generally increase the emissions factors for oil and natural gas facilities. Taken together, these changes can move operations previously below the 25,000 metric tons threshold above it, thus raising the taxable status of these operations.

The same Michigan producer witness also illustrated the challenge his operations face under the Methane Tax. While his company produces primarily oil, it sells a small amount of natural gas such that its threshold for calculation of the Methane Tax would be exceedingly small and thereby subject to the \$900 to \$1500/metric ton tax if his collective emissions of CO₂e_q exceeds 25,000 tons. We believe that Congress never intended to create such an unfair economic risk.

The issue is resolvable if EPA could approach the threshold calculation as it would under the Clean Air Act where a “facility” is based on a more realistic definition. For example, in 2016, EPA clarified that its definition of oil and natural gas production facilities required them to be under common ownership and adjacent for multiple wells to be considered as one facility. This rational approach reflects the common understanding of a “facility” and would prevent the basin-wide aggregation of wells that pulls a collection of small wells into the scope of the Methane Tax. Alternatively, EPA could exclude marginal wells from the calculation of Subpart W emissions, at least for the purpose of the Methane Tax.

The Methane Tax creates an exemption if oil and gas producers comply with the Subparts OOOOb and OOOOc regulations, but the Subpart OOOOc regulations will not be in place for 3-5 years. This timing issue eliminates a producer’s ability to utilize the exemption provision when the tax takes effect next year. Unfortunately, that may be too late to save small site marginal well owners.

Congress and EPA need to live up to the commitment not to expose “marginal wells and smaller producers” to the Methane Tax. We urge immediate action to produce this result.

Collectively, the Subpart OOOOc regulations and the Methane Tax pose serious and direct threats to hundreds of thousands of marginal wells. These threats have not been remotely addressed in the current regulatory actions completed or pending at EPA. Congress needs to step up and step in to prevent irresponsible agency actions that would savage the nation’s marginal oil and natural gas wells.

Sincerely,

Independent Petroleum Association of America
Arkansas Independent Producers and Royalty
Owners
California Independent Petroleum Association
Domestic Energy Producers Alliance
Energy Workforce and Technology Council
Gas and Oil Association of West Virginia
Independent Oil and Gas Association of New York
Independent Petroleum Association of New
Mexico
Indiana Oil and Gas Association
Kansas Independent Oil and Gas Association
Kentucky Oil and Gas Association
Louisiana Oil and Gas Association
Michigan Oil and Gas Association

Montana Petroleum Association
National Stripper Well Association
Oil and Gas Workers Association
Oil Producers' Alliance
Panhandle Producers and Royalty Owners
Pennsylvania Independent Oil and Gas Association
Permian Basin Petroleum Association
Petroleum Alliance of Oklahoma
Southeastern Ohio Oil and Gas Association
Texas Alliance of Energy Producers
Texas Independent Producers and Royalty Owners
Utah Petroleum Association
Western Energy Alliance

CC:

Representative Steve Scalise
Representative Cathy McMorris-Rodgers
Representative Frank Pallone
Senator Joe Manchin
Senator John Barrasso
Senator Tom Carper
Senator Shelley Moore Capito