

January 19, 2021

EPA Regulation of Methane Emissions

Background: Since 2012, new sources of emissions from the oil and natural gas sector have been regulated by the EPA's New Source Performance Standards (NSPS OOOO). The 2012 rule regulated emissions of volatile organic compounds, which has the co-benefit of reducing methane emissions. In 2014, the Obama Administration published its Methane Strategy, which directed multiple federal agencies to consider action to reduce methane emissions. In 2016, the Obama Administration expanded the 2012 rule to cover additional sources and added methane as a regulated pollutant (NSPS OOOOa). This action – the addition of methane as a regulated pollutant— compels the EPA under the Clean Air Act to develop guidelines for the states to regulate existing sources.

In March 2017, President Trump directed EPA to review NSPS OOOOa and take action to suspend, revise or rescind the rule.

Trump Administration EPA Action: The EPA subsequently proposed two separate rulemakings in 2018 and 2019 to revise NSPS OOOOa. The first rule ("technical rule"), proposed technical changes to OOOOa and the second rule ("policy rule") reconsidered the direct regulation of methane.

In September of last year, EPA promulgated two separate final rules,

On September 14, 2020, EPA finalized the policy rule revising the NSPS OOOOa rule adopted in 2016. This rule removed the transmission segment from the coverage of the rule and removed methane as a pollutant that is regulated by the standard. In doing so the EPA relied upon two rationales. First, the Agency determined that before it can expand a source category it must make a finding that the expansion "significantly contributed to endangerment of human health and the environment." It further concluded that if this finding must be made for the inclusion of additional industrial sectors (such as natural gas transmission) and for the inclusion of additional pollutants. Secondly, EPA argued that the inclusion of methane in the rule provided little or no additional environmental benefit because methane had been effectively controlled by the existing VOC controls for the same facilities.

On September 15th, EPA published the final technical rule that secure additional clarity regarding storage tank applicability, reduce burden for leak detection and repair, incorporates an exemption from LDAR for low production wells, and eases approval and use of new detection technologies.

Several parties challenged these rules and API intervened on behalf of EPA. With respect to the ensuing litigation, on September 14th a group of states and municipalities and a coalition of environmental groups filed petitions to review the policy rule and filed motions to stay the rule. API and other industry groups intervened in these challenges and participated in the briefing on the stay. The stay motion was subsequently denied by the D.C. Circuit. The litigation on the merits continues with petitioners' final briefs due February 14th.

The Biden Climate Plan states that, "On day one, Biden will use the full authority of the executive branch to make progress and significantly reduce emissions. Biden recognizes we must go further, faster and more aggressively than ever before, by: Requiring aggressive methane pollution limits for new and existing oil and gas operations."

To date, the Biden Administration has not formally proposed nor released an outline of what it plans to propose with regard to new methane regulation.

ATTACHMENT 1

PAST PUBLIC STATEMENT ON METHANE

The natural gas and oil industry supports ongoing emissions controls both through the cost-effective regulation of volatile organic compounds that reduce methane emissions and measurable industry action, like the Environmental Partnership, to incorporate methane reducing technologies throughout the supply chain. These efforts are working. While global emissions of methane are up, overall U.S. methane emissions are down even as America produces more affordable, reliable and cleaner natural gas.

ATTACHMENT 2

BACKGROUND

CLEAN AIR ACT SECTION 111(d) – EXISTING SOURCE REGULATORY DEVELOPMENT PROCESS

- Section 111 of the Clean Air Act governs EPA's establishment of New Source Performance Standards. Under section 111(b), EPA identifies the "best system of emission reduction" (BSER) that has been adequately demonstrated to control emissions of a particular pollutant from a particular type of source, and sets a standard for new sources based on the application of that BSER.

- The rule is proposed under section 111(d), which addresses existing sources. It sets a framework under which the states develop plans establishing standards of performance for their existing sources. The states then submit those plans to EPA for approval. Under section 111(d), EPA still determines the BSER, but, unlike with new sources under 111(b), here the *states* are the ones that actually establish performance standards.
- Implementing Section 111(d) is a three-step process:
 - First, EPA issues guidelines that determine the Best System of Emission Reduction (BSER).
 - EPA evaluates technologies and practices that can be applied to or at a covered source to reduce emissions of a pollutant.
 - States are given the flexibility to design a plan that, in the state's judgment, will work best under its particular circumstances.
 - Second, States will have three years from the date of the final rule to prepare and submit a plan that establishes a standard of performance.
 - The states establish standards of performance that reflect the degree of emission limitation achievable through the application of the BSER.
 - The states will determine which of the "candidate technologies" can be applied to their sources and determine what emission reductions will result.
 - States have a better understanding of the sources within their borders and can consider the unique factors of each unit, such as technology and practices that are already being implemented, remaining useful life, *etc.*
 - Third, once a state plan is submitted, EPA will have 12 months to evaluate and determine whether the plan can be approved. In the event a state does not submit a plan or fails to submit an approvable plan, EPA will then have two years to develop a federal plan for that state.