

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

Courtney Taylor, Democratic Staff Director
Adam Tomlinson, Republican Staff Director

March 26, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Regan,

More than one and a half years have passed since President Biden signed the Democrats' reckless tax and spending spree into law.¹ The Environmental Protection Agency (EPA) has moved forward with implementation of many spending programs in that law and even begun to outlay funding. Notably, the EPA has not finalized implementation regulations for the one taxation provision in the Committee on Environment and Public Works' title of the Inflation Reduction Act even though, as of the beginning of this year, oil and gas operators are subject to certain financial liability – a new natural gas tax – established in the bill.² The Biden administration has made the potential impacts of the natural gas tax even worse than originally envisioned because of the Agency's disorderly implementation of the provision. Together with other policies like the "pause" on approvals of liquefied natural gas export facilities, the administration is sowing regulatory confusion across the natural gas sector. These burdensome and punitive policies will hamstring investments in natural gas, which is responsible for a significant portion of American greenhouse gas emissions reductions since the widespread development of improved natural gas production technology.

Because of the EPA's implementation delay, oil and gas operators have expressed legitimate frustration that they are in the unenviable position of trying to guess financial liability for 2024 – the first covered year of the tax – with an unknown time for completion of the implementation rulemaking under the most recent Unified Regulatory Agenda.³ I have consistently opposed the imposition of the tax on policy grounds, warning of the folly of imposing a new tax on energy at

¹ Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat, 1818 (2022).

² *Id.* § 60113 (codified at 42 U.S.C. 7436). The natural gas tax portion of the provision is provided for at 42 U.S.C. 7436(c) to (h).

³ See Office of Information & Regulatory Affairs, Office of Mgm't & Budget, Abstract: Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems (last visited Mar. 22, 2024), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2060-AW02>.

a time of high energy costs worsened by inflation.⁴ I now also write in strong opposition to the way in which the EPA has chosen to implement the natural gas tax in its recent proposal.⁵

The EPA's proposed natural gas tax regulations make several unreasonable determinations that must be addressed. First, the EPA's revised emission factors within its subpart W proposal, that the Agency proposes to rely on for the reporting requirements for its natural gas tax makes broad assumptions about oil and gas operations and technologies that will lead to inaccurate reporting for many owners and operators, as I have raised in previous comments on the subpart W proposal.⁶ Section 7436(h) requires the EPA to ensure that calculation of the natural gas tax is "based on empirical data" and "accurately reflect the total methane emissions and waste emissions from applicable facilities, and allow owners and operators of applicable facilities to submit empirical emissions data." However, the Agency's currently proposed subpart W revisions do not provide a pathway to allow facilities to use their own empirical data if they choose to measure their methane emissions with advanced monitoring technologies and other methods. The EPA must provide this as an option as required by the statute.

Second, the proposed natural gas tax rule would unreasonably include small and independent operators as potentially subject to the tax. As the EPA Assistant Administrator for the Office of Air and Radiation admitted, "EPA was directed by Congress to collect a charge on methane emissions from *large* oil and gas facilities that are high-emitting and wasteful."⁷ Under the EPA's proposed revisions to subpart W, some smaller operators, who were once below the "waste emissions threshold," may now see their reported methane emissions inflated, and thus, be liable to pay the natural gas tax. Before moving ahead in the regulatory process, the Agency should ensure that the revisions are accurate, and that these small natural gas and petroleum operators are not covered by the natural gas tax.

Third, the EPA has arbitrarily ignored the direction in Section 7436(f)(4) for the EPA to grant natural gas and petroleum owners and operators the authority to aggregate, or "net," emissions among facilities of "common ownership or control." The proposed rule unreasonably prohibits the netting of emissions for any subpart W facility that is below the reporting threshold of 25,000 metric tons of CO₂ equivalent. This restriction means that operators cannot offset emissions from

⁴ Senator Capito, *Inflation Reduction Act Indefensible*, Charleston Gazette-Mail (Aug. 3, 2022), https://www.wvgazettemail.com/opinion/op_ed_commentaries/sen-shelley-moore-capito-inflation-reduction-act-indefensible-opinion/article_3ebd690b-40f2-560c-9875-48ee61765837.html.

⁵ Waste Emissions Charge for Petroleum and Natural Gas Systems, 89 Fed. Reg. 5318 (Jan. 26, 2024).

⁶ Letter from Senators Capito, Cramer, Mullin, Ricketts, and Sullivan to EPA Administrator Regan (Dec. 13, 2023), available at https://www.epw.senate.gov/public/_cache/files/b/0/b0559828-89b1-4456-820c-51ae1ecb7315/98783E8E1057069E7FB16CBB7B32FDE3.subpart-w-letter-final-12.13.23.pdf.

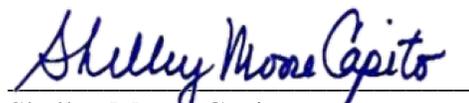
⁷ Protecting Clean American Energy Production and Jobs by Stopping EPA's Overreach: Hearing Before the S. Sub Comm. On Environment, Manufacturing, and Critical Minerals, 118th Cong. (Jan. 10, 2024) (statement of Joe Goffman), <https://energycommerce.house.gov/events/environment-manufacturing-and-critical-materials-subcommittee-hearing-protecting-clean-american-energy-production-and-jobs-by-stopping-epa-s-overreach>.

one facility that has emissions below the waste emission threshold with a facility under “common ownership or control” that is reporting emissions above the threshold. Section 7436(f)(4) expressly allows 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).” The statute specifically directs the EPA to account for facilities with emissions below applicable thresholds, and refers to “*all applicable segments* identified in subsection (d).”⁸ Moreover, the plain language uses the term “facility,” not “applicable facility.” Elsewhere in Section 7436, the term “applicable facility” is used to refer to facilities that exceed the thresholds. The EPA cannot limit the netting of emissions to “applicable facilities” because doing so would be contrary to the plain text.

Fourth, the EPA’s proposed rule would also prevent the netting of facilities’ methane emissions at the parent company level. The statute plainly states that the Administrator “shall allow for the netting of emissions” in calculating the charge for “facilities under common ownership or control.” The statute mandates that the Administrator shall allow netting between facilities under common ownership. It does not provide the EPA with discretion to establish restrictions on common ownership of facilities within and across all applicable industry segments in subsection (d). The Agency must follow the statutory language and account for the complex ownership structures of natural gas and petroleum companies across the United States in its regulations.

I request that the EPA address these shortcomings as it implements the natural gas tax and that these comments be included in the regulatory docket.

Sincerely,



Shelley Moore Capito
Ranking Member
Environment & Public Works Committee

⁸ 42 U.S.C. 7436(f)(4) (emphasis added).