

# United States Senate

WASHINGTON, DC 20510

June 15, 2023

The Honorable Michael Regan  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20460

Dear Administrator Regan,

We strongly support the Environmental Protection Agency's (EPA) critical work to reduce methane emissions from oil and gas production, and we encourage you to seize existing opportunities to drive sharp reductions in emissions of this potent greenhouse gas. Longstanding provisions of the Clean Air Act, together with the amendments Congress recently adopted in the Inflation Reduction Act, require EPA to implement a comprehensive program to reduce oil and gas methane emissions. This comprehensive program is a three-pronged stool with: (1) rules to limit emissions; (2) a waste emissions charge; and (3) financial support and incentives for methane mitigation and monitoring by affected communities and industry.<sup>1</sup> We urge you to swiftly finalize the proposed rules, with the addition of effective requirements to end wasteful routine flaring of gas, and rapidly implement the regulatory updates and financial support required under the Methane Emission Reduction Program in the Inflation Reduction Act.

As you know, deep reductions in methane emissions – which are over 80 times more powerful than carbon dioxide over the near term – are key to slowing climate change in this critical decade. Fortunately, EPA has the necessary tools to achieve these reductions. Section 111 of the Clean Air Act requires EPA to set new source performance standards and existing source guidelines for greenhouse gas emissions from new and existing oil and gas production activities. In addition, new Clean Air Act section 136 establishes the Methane Emission Reduction Program. This program directs EPA to implement a waste emissions charge on methane emissions from oil and gas production. It also requires EPA to update the existing Greenhouse Gas Reporting Rule for oil and gas production – which provides the basis for assessing the waste emissions charge – to ensure more accurate quantification and reporting of methane emissions.<sup>2</sup> No less critical is EPA's responsibility to distribute the \$1.5 billion of funding for methane mitigation and monitoring and to address legacy pollution, which is provided in the incentives portion of the Methane Emission Reduction Program.<sup>3</sup> All three of these elements work together – the incentives will help drive early emissions reductions, which will help companies lower or

---

<sup>1</sup> U.S. EPA, *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*, 87 Fed. Reg. 74702 (Dec. 6, 2023) (<https://www.federalregister.gov/documents/2022/12/06/2022-24675/standards-of-performance-for-new-reconstructed-and-modified-sources-and-emissions-guidelines-for>); Clean Air Act (CAA) §136.

<sup>2</sup> CAA §136(c), (h).

<sup>3</sup> CAA §136(a), (b).

avoid the applicable charge near term and later meet the greenhouse gas standards. Once the greenhouse gas emissions standards are fully in place, oil and gas facilities that are complying with the standards are exempt from the waste emissions charge under the Methane Emission Reduction Program.<sup>4</sup>

### **Greenhouse Gas Emissions Standards**

EPA issued initial and supplemental notices of proposed rulemaking on November 15, 2021, and December 6, 2022, respectively, to update and adopt new standards for new and existing oil and gas production operations under Clean Air Act section 111.<sup>5</sup> With one critical exception – the provisions on flaring of associated gas (gas produced at oil wells) – the proposals lay out an effective and ambitious set of requirements that will substantially cut oil and gas emissions of methane, as well as volatile organic compounds (VOCs), which harm human health by driving smog formation. We commend these proposed requirements and encourage EPA swiftly to finalize the proposal, without any weakening changes and with appropriate improvements to increase its effectiveness, as recommended in public comments.

With respect to flaring, however, we believe that the approach proposed in the supplemental notice is insufficient to meet the requirements of section 111. It would also allow continued massive volumes of methane and carbon dioxide emissions from wasteful flaring of saleable gas resources. In 2022, according to the World Bank, U.S. oil and gas producers flared 8 billion cubic meters of gas – roughly enough to supply all Delaware and Pennsylvania households that year.<sup>6</sup> This flaring produced an estimated 22.4 metric tons of CO<sub>2</sub>-equivalent greenhouse gases, equivalent to the annual emissions of almost 50 million cars.<sup>7</sup> The industry itself recognizes that routine flaring (flaring used to dispose of associated gas produced at oil wells, which is the majority of flaring in the U.S.) is unnecessary and wasteful, with 54 oil and gas companies to date pledging to end routine flaring by 2030.<sup>8</sup> In fact, company reports indicate that Oxy has already eliminated routine flaring from U.S. operations, and ExxonMobil announced that it has

---

<sup>4</sup> CAA §136(f)(6).

<sup>5</sup> U.S. EPA, *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 (Nov. 15, 2021) (<https://www.federalregister.gov/documents/2021/11/15/2021-24202/standards-of-performance-for-new-reconstructed-and-modified-sources-and-emissions-guidelines-for>); U.S. EPA, *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*, 87 Fed. Reg. 74702 (Dec. 6, 2023) (<https://www.federalregister.gov/documents/2022/12/06/2022-24675/standards-of-performance-for-new-reconstructed-and-modified-sources-and-emissions-guidelines-for>).

<sup>6</sup> World Bank, *2023 Global Gas Flaring Tracker Report*, 7 (Mar. 2023) (<https://www.worldbank.org/en/topic/extractiveindustries/publication/2023-global-gas-flaring-tracker-report>); U.S. Energy Information Administration, *Natural Gas Consumption by End Use, Volumes Delivered to Residential* ([https://www.eia.gov/dnav/ng/ng\\_cons\\_sum\\_a\\_EPG0\\_vrs\\_mmcf\\_a.htm](https://www.eia.gov/dnav/ng/ng_cons_sum_a_EPG0_vrs_mmcf_a.htm)).

<sup>7</sup> World Bank, *Global Gas Flaring Reduction Partnership, What are the Environmental Impacts of Gas Flaring?* (<https://www.worldbank.org/en/programs/gasflaringreduction/gas-flaring-explained#:~:text=Assuming%20a%20'typical'%20associated%20gas,CO2e%20emissions%20annually%2C%20of%20which>) (estimating GHG emissions per cubic meter of gas flared); U.S. EPA, *Greenhouse Gas Equivalencies Calculator* (<https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator#results>).

ended routine flaring in the Permian Basin.<sup>9</sup> EPA's standards must strictly limit venting and flaring, and end routine flaring as a means of handling associated gas.

Section 111 of the Clean Air Act requires EPA to set new source performance standards based on the degree of emissions reductions that can be achieved by the "best system of emissions reduction," taking costs and other factors into account. Since natural gas is a saleable resource, capturing and using the natural gas, or reinjecting it, is clearly preferable to burning it off as a waste product, and routine flaring cannot be the "best system of emission reduction." Accordingly, in the supplemental notice, EPA proposed to allow flaring of associated gas only when "it is not feasible to route the associated gas to a sales line or use it for another beneficial purpose due to technical or safety reasons."<sup>10</sup> Unfortunately, the proposed regulation would make the limitation unenforceable by allowing the operator essentially to self-certify that putting the gas to productive use is infeasible. State oil and gas regulations typically already prohibit "waste" of gas without reason, but have, in most states, manifestly failed to prevent widespread routine flaring. Thus, EPA's proposal would merely enshrine the status quo in federal regulation, allowing the massive greenhouse gas emissions from flaring to continue unabated.

In contrast to the proposed approach, states such as Colorado and New Mexico have adopted enforceable flaring limits by broadly prohibiting venting and flaring, subject to narrowly defined exemptions available only for short-term, temporary flaring.<sup>11</sup> In other words, the regulations, not the operator, specify the circumstances in which sale or other beneficial use may not be feasible. For example, these state regulations allow flaring during short-term emergency conditions, during specified testing and maintenance activities, and when the natural gas does not meet pipeline specifications.<sup>12</sup> In comments on EPA's proposal, bp, Oxy, and Pioneer all encouraged EPA to clarify the narrow circumstances under which flaring could occur.<sup>13</sup> Defining the limited circumstances in which flaring is allowed effectively prohibits wasteful routine flaring, and it

---

<sup>8</sup> World Bank, "Zero Routine Flaring by 2030" Initiative endorses,

(<https://www.worldbank.org/en/programs/zero-routine-flaring-by-2030/endorses>).

<sup>9</sup> Environmental Defense Fund, *Flaring Update*, 2 (Apr. 2023) (<https://business.edf.org/files/World-Bank-Flaring-EDF-Update-2023.pdf>).

<sup>10</sup> U.S. EPA, *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*, 87 Fed. Reg. 74779 (Dec. 6, 2023).

<sup>11</sup> See Code of Colorado Regulations, 2 CCR 404-1-903 (<https://casetext.com/regulation/colorado-administrative-code/department-400-department-of-natural-resources/division-404-oil-and-gas-conservation-commission/rule-2-ccr-404-1-practice-and-procedure/section-2-ccr-404-1-900-environmental-impact-prevention/section-2-ccr-404-1-903-venting-or-flaring-natural-gas>); New Mexico Administrative Code, Venting and Flaring of Natural Gas, §19.15.28.8 (<https://casetext.com/regulation/new-mexico-administrative-code/title-19-natural-resources-and-wildlife/chapter-15-oil-and-gas/part-28-natural-gas-gathering-systems/section-1915288-venting-and-flaring-of-natural-gas>).

<sup>12</sup> See *id.*

<sup>13</sup> See Letter from Oxy to U.S. EPA, 3 (Feb. 14, 2023) (<https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2213>); Letter from bp to U.S. EPA, 12-13 (Feb. 13, 2023) (<https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2409>); Letter from Exxon Mobil to U.S. EPA, 3 (Feb. 13, 2023) (<https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2388>).

provides the clear fact-based criteria necessary for effective enforcement. We urge EPA to adopt this approach in the final rule.

### **Methane Emission Reduction Program Regulations**

EPA will likely need to complete two regulatory updates to implement the Methane Emission Reduction Program. Clean Air Act section 136(h) directs EPA, by no later than August 16, 2024, to revise the Greenhouse Gas Reporting Rules for oil and gas production to ensure that reporting, and the methane charge based on that reporting, are based on “empirical data” and “accurately reflect the total methane emissions and waste emissions from [production facilities].” The updated regulations must also allow owners and operators to submit empirical data to EPA for purposes of reporting emissions and calculating the methane charge. In addition, various details of program implementation likely will need to be spelled out in regulation, such as how and when operators must pay the methane charge and how to determine whether specified exemptions apply.

The deadline for the regulatory updates to the Greenhouse Gas Reporting Rules is only about 14 months away, and beginning sometime in 2025, operators will be required to pay the charges for excess methane emitted in calendar year 2024.<sup>14</sup> Given these timeframes, we urge EPA to propose all needed regulatory updates as soon as possible.

### **Methane Emission Reduction Program Funds**

The Methane Emission Reduction Program also provides \$1.5 billion of funding to incentivize methane mitigation and monitoring. This will help industry quickly reduce methane emissions, improve emissions monitoring, and comply with the regulatory requirements of the fee and the section 111 standards. This funding will also help communities monitor methane pollution and it will incentivize the clean-up of oil and gas legacy pollution in communities – especially low-income and disadvantaged communities. About half of the funding, \$700 million, is intended to be focused specifically on cleaning-up and plugging marginal conventional wells.<sup>15</sup>

Congress appropriated this funding in fiscal year 2022 and intended EPA to disperse it as swiftly as possible, consistent with responsible management of the funds, before the methane fee is implemented. Moving quickly to deploy these funds will be good for the environment, public health, and the economy. For example, providing funds for properly decommissioning and plugging marginal conventional wells would help industry cost-effectively cut emissions, provide additional well-paying jobs for oil and gas workers, and reduce methane and other air pollution in nearby and downwind communities. We are deeply concerned that EPA has yet to solicit requests for funding applications under the Methane Emissions Reduction Program and strongly urge EPA to begin to make the funds available this summer.

In closing, each of the facets of EPA’s work to reduce methane and other greenhouse gas emissions from oil and gas production that we have highlighted here is vital to our efforts to slow

---

<sup>14</sup> The due date for the payments would be set by EPA through regulation.

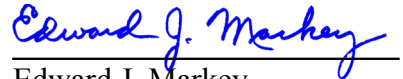
<sup>15</sup> See CAA §136(b).

climate change. We thank you for carefully considering our views on these matters and for your dedicated work to address the climate crisis and protect public health.

Sincerely,



Thomas R. Carper  
Chairman  
Committee on Environment  
and Public Works



Edward J. Markey  
United States Senator



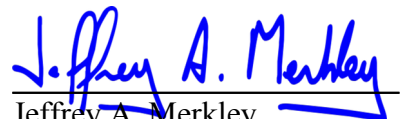
Benjamin L. Cardin  
United States Senator



Sheldon Whitehouse  
United States Senator



Alex Padilla  
United States Senator



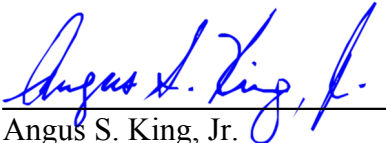
Jeffrey A. Merkley  
United States Senator

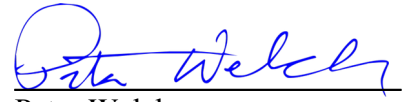



Tina Smith  
United States Senator

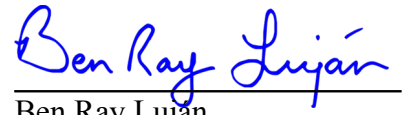


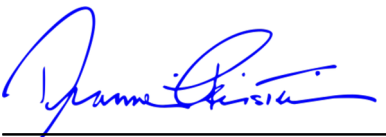
Martin Heinrich  
United States Senator

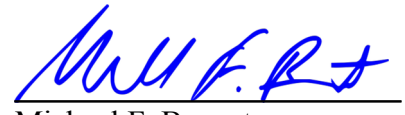
  
Angus S. King, Jr.  
United States Senator

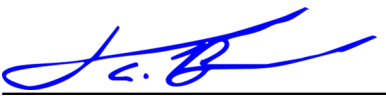
  
Peter Welch  
United States Senator

  
Chris Van Hollen  
United States Senator

  
Ben Ray Lujan  
United States Senator

  
Dianne Feinstein  
United States Senator

  
Michael F. Bennet  
United States Senator

  
Cory A. Booker  
United States Senator