Congress of the United States
House of Representatives
Washington, DC 20515-3605

April 8, 2024

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

Dear Administrator Regan,

We write to urge the Environmental Protection Agency (EPA) to revise the proposed rules titled Waste Emissions Charge for Petroleum and Natural Gas Systems[1] and Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems[2], more commonly referred to as the Waste Emissions Charge (WEC) and Subpart W.

The proposed WEC and Subpart W rules blatantly violate Congressional intent for the Inflation Reduction Act Methane Emissions Reduction Program (MERP) and create an unworkable and unharmonious regulatory structure. As currently proposed, this scheme will generate the maximum amount of fees while providing zero of the intended relief, or the improved accuracy of emissions reporting originally envisioned by Congress. For decades, EPA has been recognized globally for its expertise and status as the premier environmental regulator and emissions data authority. Should the EPA implement these rules as proposed, the EPA's global stature could be jeopardized, and the United States' ability to demonstrate its ongoing emissions reductions will be compromised.

The Clean Air Act's (CAA) Greenhouse Gas Reporting Program (GHGRP) Subpart W is the cornerstone of the newly developed WEC, as fees issued are based on emissions reported under Subpart W. The EPA's proposed overhaul of Subpart W will severely limit the technology options available to operators and inaccurately skew calculations and methodologies to result in higher reported emissions. The inability of operators to use advanced and alternative technologies will undermine EPA's efforts to achieve demonstrable emissions reductions. Additionally, the proposal moves combustion emissions reporting from Subpart C of the GHGRP to Subpart W, further skewing the accuracy of reported emissions as all other industries report their combustion emissions to Subpart C. If EPA's rules require inaccurate reports through Subpart W, subsequent WEC filings will be inaccurate, therefore requiring fees paid based on likely inflated and potentially non-existent emissions. To ensure the accuracy of Subpart W reports and reflect Congressional intent for the MERP, EPA must allow operators access to all relevant technologies to submit empirical data, revise Subpart W's emissions factors and methodologies to reflect accurate emissions, and maintain reporting of combustion emissions in Subpart C of the GHGRP.

[1] 87 FR 73588
[2] 88 FR 50282

A key issue in the proposed rules for both Subpart W and WEC is EPA's failure to acknowledge the fundamental connection between these rules. Instead of speaking to the obvious connection and clear Congressional intent, EPA has instead gone out of its way to silo these rules and develop each with intentional ignorance of the other. For example, EPA has not adequately defined or supported its rationale for what constitutes a "facility" as it relates to reporting emissions and determining fees. In the WEC rule, EPA proposes to rely on Subpart W's definition of "facility", but Subpart W has not been finalized. The final definition will have a substantial impact on the operation of both Subpart W reporting and the WEC. Without addressing this key connection between Subpart W and WEC in either proposed rule, EPA has failed to sufficiently explain the "major legal interpretations and policy considerations underlying the proposed rule."[3]

Further disregard for Congressional intent is evidenced in the WEC's proposed netting mechanism. When calculating the total charge obligation for facilities, Section 136 of the IRA instructs the EPA to allow facilities under common ownership or control to reduce the total amount owed by accounting for emission levels being below the applicable threshold across all segments. In the proposed WEC rule, however, EPA has inappropriately limited netting by not allowing it to take place at the parent company level, and by limiting the emissions that may be included in the netting mechanism. EPA must allow flexibility in the netting mechanism to allow netting to take place at the parent company level and to include emissions below the "WEC applicable emissions" threshold.

Without justification, EPA has proposed a WEC filing and payment timeline that is incompatible with Subpart W's established process by requiring concurrent WEC and Subpart W filings. Subpart W filings are due annually on March 31 and undergo a verification process performed by EPA before being finalized. It is not abnormal for EPA to request additional information during this verification process, and even years after finalization to make minor adjustments. Instead of providing insight into how the EPA will address and refund overpayments found in subsequent revisions to Subpart W filings, the agency has threatened fines and penalties for any underpayment. The proposed WEC filing and payment provisions are untenable and must be significantly revised. To facilitate a workable implementation, WEC filings and payments must be due after Subpart W verification has been completed, a 3-year statute of limitations beyond which EPA will not seek additional information on previous Subpart W filings must be established, and a de minimis threshold of +/- 5 percent must be surpassed to require a change to a Subpart W or WEC filing within the allowable timeline.

Finally, Congress clearly intended for a regulatory compliance exemption to be available for oil and gas facilities complying with requirements of the New Source Performance Standards (NSPS) OOOOb (the "EPA methane rule") and for facilities complying with their respective state plan pursuant to the Emissions Guidelines (EG) OOOOc. Unfortunately, without authority, EPA has unreasonably restricted these exemptions by broadening the definition of compliance to include deviations and minor clerical errors and by delaying the availability of the exemption until every state has implemented its respective plan. It is imperative that EPA grants compliance exemptions when a facility's respective rule is implemented and narrows the definition of "compliance" only to include fully adjudicated occurrences of non-compliance with the emissions reduction components of a facility's applicable rule.

Conflicting, inefficient, and technically infeasible requirements are inconsistent with clear Congressional intent laid out in the IRA and will create legal vulnerabilities for the durability and enforceability of the WEC and Subpart W rules. EPA must go back to the drawing board and develop supplemental proposed rules for the WEC and Subpart W that are consistent with Congressional intent, allow accurate GHG

[3] CAA § 307(d)(3)(C)

emissions reporting using a variety of technologies, and do not unfairly levy additional costs on both American energy consumers and producers. We look forward to working with the EPA to address these concerns in supplemental proposals.

Sincerely,

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Member of Congress

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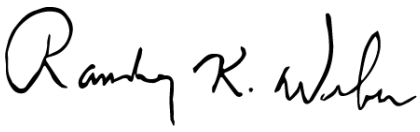

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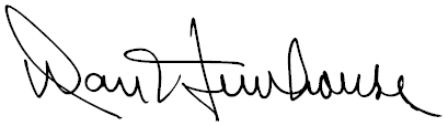

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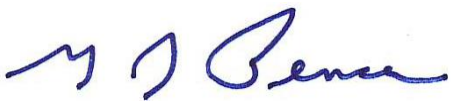

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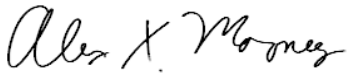

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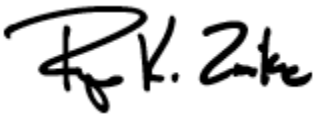

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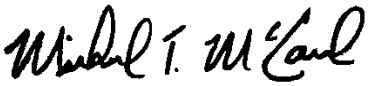

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