

IOGCC Workgroup for the Development of EPA Methane Rule Guidance

Document for State Regulators

Reference Materials

I.	EPA Public Resources for Oil and Gas Regulators	Page 1
II.	Legal References	Page 2
III.	EDF References	Page 16
IV.	Initial Questions from State Regulators	Page 18

I. EPA Public Resources for Oil and Gas Regulators

In addition to the non-exhaustive list below, feel free to reach out to Lucas Stephens (stephens.lucas@epa.gov) or Amy Hambrick (Hambrick.amy@epa.gov) – the rule lead – with any questions. Lucas will be better able to handle OOOOc and state plan related inquiries, Amy better for technical issues with the contents of the rules.

[Presentation slides giving an overview of the rules](#), aimed at small businesses and industry.

[Video overview of the rule](#).

[OOOOb](#) and [OOOOc](#) in the eCFR – a handy, searchable format of the regulations.

[Table summarizing standards under OOOOb and OOOOc by source](#).

[Small Entity Compliance Guide for NSPS OOOOb](#). – A comprehensive resource for owners and operators with sections on determining applicability, demonstrating compliance, etc.

[Summary of Requirements for State Plans Under OOOOc](#) – A compilation and explanation of the requirements for state plans for existing sources. It includes information on the development process and its public participation elements.

[EPA's website](#) on the oil and gas rules has additional fact sheets and resources.

[EPA's website on the Waste Emissions Charge](#) explains this (currently proposed rule) and its relationship to other oil and gas regulations, including subparts W, OOOOb, and OOOOc.

II. Legal References

REPORT ON USEPA METHANE RULE

OCTOBER 4, 2024

A. Introduction

On March 8, 2024, the United States Environmental Protection Agency (“EPA”) promulgated as a final rule “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” 89 Fed. Reg. 16,820 (Mar. 8, 2024) (“Rule”).

B. Litigation summary

The Rule has been challenged in the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) and in the Supreme Court of the United States (Supreme Court). The following are highlights of those challenges.

1. Parties to the litigation

a. Petitioners:

No. 24-1054: State of Texas; Railroad Commission of Texas; Texas Commission on Environmental Quality

No. 24-1059: State of Oklahoma; State of West Virginia; State of Arkansas; State of Alabama; State of Alaska; State of Florida; State of Georgia; State of Idaho; State of Indiana; State of Iowa; State of Kansas; Commonwealth of Kentucky; State of Louisiana; State of Mississippi; State of Missouri; State of Montana; State of Nebraska; State of North Dakota; State of Ohio; State of South Carolina; State of Tennessee; State of Utah; Commonwealth of Virginia; State of Wyoming; Arizona Legislature

No. 24-1101: Michigan Oil and Gas Association; Miller Energy Company II, LLC

No. 24-1103: Independent Petroleum Association of America; Arkansas Independent Producers and Royalty Owners; Domestic Energy Producers Alliance; Eastern Kansas Oil & Gas Association; Gas and Oil Association of West Virginia; Illinois Oil and Gas Association; Independent Petroleum Association of New Mexico; Indiana Oil and Gas Association; International Association of Drilling Contractors; Kansas Independent Oil and Gas Association; Kentucky Oil and Gas Association; National Stripper Well Association; North Dakota Petroleum Council; Ohio Oil and Gas Association; Oklahoma Independent Petroleum Association; Panhandle Producers and Royalty Owners Association; Pennsylvania Independent Oil & Gas Association; Permian Basin Petroleum Association; Petroleum Association of Wyoming; Texas Alliance of Energy Producers; Texas Independent Producers and Royalty Owners Association; Western Energy Alliance

No. 24-1111: GPA Midstream Association

No. 24-1114: Texas Oil and Gas Association

No. 24-1115: Interstate Natural Gas Association of America

No. 24-1116: American Petroleum Institute

No. 24-1117: American Exploration & Production Council

No. 24-1118: Air Alliance Houston; Clean Air Council; Environmental Integrity Project

b. Respondents:

Respondents are the United States Environmental Protection Agency and Michael S. Regan, Administrator for the United States Environmental Protection Agency.

c. Intervenor supporting petitioners:

Continental Resources, Inc. is an Intervenor-Petitioner.

d. Intervenor supporting respondents:

Commonwealth of Massachusetts; Commonwealth of Pennsylvania; District of Columbia; State of California; State of Colorado; State of Connecticut; State of Delaware; State of Illinois; State of Maine; State of Maryland; State of Michigan; State of New Jersey; State of New Mexico; State of New York; State of North Carolina; State of Oregon; State of Rhode Island; State of Vermont; State of Washington; State of Wisconsin; Center for Biological Diversity; Clean Air Council; Dakota Resource Council; Earthworks; Environmental Defense Fund; Environmental Law & Policy Center; Food & Water Watch; Fort Berthold Protectors of Water and Earth Rights; Green Latinos; Natural Resources Defense Council; and Sierra Club are Intervenor-Respondents.

2. Motions for Stay

Several motions to stay the Rule were filed with the DC Circuit by states and others. Those motions were denied by the Court on July 9, 2024. The Texas motion contains a declaration in support of staying the Rule that was offered by the Texas Director of the Office of Air. In addition, several declarations from the Oklahoma/West Virginia motion for stay contain statements of concern about the Rule that have been offered by state officials in the following states: West Virginia, Oklahoma, Alaska, Virginia, North Dakota, Utah, Montana, Alabama, Ohio, Idaho, South Carolina, and Tennessee.

3. Emergency Application for Stay

On August 23, 2024, the State of Oklahoma and 22 other states filed an emergency application for stay of the methane rule with the Supreme Court of the United States.

https://www.supremecourt.gov/DocketPDF/24/24A213/323306/20240823171854848_Oklahoma%20v.%20EPA%20-%20Application%20For%20Stay.pdf.

On August 26, 2024, industry applicants (Continental Resources et al.) also file an application for stay of the Rule with the Supreme Court.

https://www.supremecourt.gov/DocketPDF/24/24A215/323400/20240826153558627_FINAL%20Continental%20Resources%20Immediate%20Stay%20Application%20Methane%20Rule.pdf

On September 20, 2024, EPA filed its response to the applications for stay.

https://www.supremecourt.gov/DocketPDF/24/24A215/326469/20240920144052131_24A213%20Govt%20Response%20to%20Stay%20Appls.pdf

Also on September 20, 2024, Environmental & Health Respondent' filed their opposition to the applications for stay.

https://www.supremecourt.gov/DocketPDF/24/24A215/326490/20240920153754530_NGO%20OSCOTUS%20Stay%20Opposition%20Methane%20FINAL%20Sept%2020%202024.pdf

Also on September 20, 2024, State-Respondent-Intervenors' filed their opposition to the applications for stay.

https://www.supremecourt.gov/DocketPDF/24/24A215/326457/20240920140332056_Nos.%2024A213%2024A215%20California%20et%20al.%20Opposition.pdf

On October 4, 2024, the Supreme Court denied the applications to stay the Rule pending resolution of challenges to the merits of the Rule.

The following excerpts from the state and industry applications highlight the portions of the rule that were identified to the Supreme Court as issues of concern. These points suggest areas that may be raised in briefing on the merits of the Rule currently pending before the D.C. Circuit.

a. Presumptive Standards of Performance

State application: "In the Rule, EPA did not limit itself to its statutory role for existing sources and then leave it to the States to adopt appropriate standards of performance. See 42 U.S.C. § 7411(d)(1); West Virginia, 597 U.S. at 710. Instead, the Rule lists specific technologies and methods for States to adopt in their Section 111(d) plans...."

....

"The Rule's "presumptive standards" represent EPA's attempts to gut the States' standard-setting authority under Section 111(d). As explained above, Section 111(d) gives States the authority to adopt standards of performance for existing sources, with EPA serving only as a reviewer for compliance with the Act. Supra pp.15–16. The Rule impermissibly flips the federal-state structure in Section 111(d) on its head, essentially requiring EPA-set standards as the default. The Rule even admits as much, stating in a footnote that the "presumptive standards - 20 - would serve as a guide to the development of a Federal plan," even as EPA claims that they "are not the same as a Federal plan under CAA section 111(d)(2)."

b. Two-year Deadline

State application: “Specifically, EPA did not explain how the Rule’s two-year deadline provides States with sufficient time to develop their own standards of performance under Section 111(d) rather than simply adopt EPA’s “presumptive standards.” This is especially so for State-Applicants like Oklahoma, who must regulate for the first time methane and VOC emissions from hundreds of thousands of new and diverse oil and gas facilities. See *Ohio*, 144 S. Ct. at 2053; *State Farm*, 463 U.S. at 43–44.”

“As many State-Applicants explained to EPA in comments during the rulemaking process, many States absolutely need at least three years to prepare a state plan under Section 111(d), given that the Rule contemplates many States regulating for the first time hundreds of thousands of diverse oil and gas facilities.”

c. Super Emitter Program

Industry application: “Nonetheless, EPA claims its authority to delegate its monitoring and enforcement authority “is based on EPA’s authority under CAA Section 114(a) to require ‘any person who owns or operates an emission source’ (except mobile sources) to provide information necessary for purposes of carrying out the CAA and its authority to regulate sources under CAA Section 111.” App. 70a (89 Fed. Reg. at 16,877). CAA Section 114(a) establishes requirements on owners or operators of emissions sources to report and provide information to EPA. CAA Section 114 does not grant authority to third parties, who do not own or operate emission sources to collect or report such information, or allow EPA to delegate any of its information gathering authority to such third parties. See 42 U.S.C. § 7414(a)(1); 42 U.S.C. § 7414(b)(1) (noting that EPA’s administrator may only “delegate to such State any authority he has to carry out this section.” (emphasis added)). Nothing in the CAA 17 gives EPA the authority to delegate its information gathering power to private parties or impose penalties on Industry Applicants based on reports generated by unlawfully deputized private parties.”

d. BSER for Associated Gas

Industry application: “In the Final Rule, EPA selected a BSER for associated gas of “rout[ing] associated gas to a sales line” that effectively prohibits flaring. App. 23a (89 Fed. Reg. 16,833). Under section 60.5377b of the Final Rule, operators of a well that produces associated gas have only four options under the BSER: (1) routing (recovering) the associated gas into a sales line; (2) using the associated gas onsite as a fuel source; (3) using the associated gas for another useful purpose; or (4) reinjecting the recovered associated gas into the well or another well. The BSER, therefore, essentially prohibits new sources from flaring associated gas. See App. 246a (89 Fed. Reg. at 17,053 (§ 60.5377b)).⁴ These BSER requirements can only be avoided if an operator makes a technical infeasibility demonstration showing that all of the BSER options are technically impossible (which demonstration cannot take cost into account). App. 144a (89 Fed. Reg. at 16,951).”

e. Net Heating Value Monitoring Requirements

Industry application: “Section 60.5417b of the Final Rule requires operators of new sources that route emissions to a flare to “[c]ontinuously monitor or collect a sample of the inlet gas to the enclosed combustion device or flare twice daily to determine the average NHV of the gas stream for 14 consecutive operating days.” App. 298a (89 Fed. Reg. at 17,105). These requirements are literally impossible given the intermittent flow of gases to flares. App. 430a at ¶37. Gas flow to a flare may occur for as little as a few minutes at a time, making continuous monitoring or collection of a single one-hour sample impossible, let alone the 28 one-hour samples over 14 consecutive days as required by the Final Rule impossible. *Id.*”

f. Enforceable limits for storage tanks

Industry application: “The Final Rule requires new or reconstructed “batteries” of oil storage tanks with the potential for emissions of 6 tons per year (“tpy”) of VOCs or 20 tpy of methane to comply with new LPE requirements, including: initial emissions testing, initial NHV testing, continuous flow monitoring, monthly visual observations for emissions, and recordkeeping and reporting requirements. App. 237a-240a. (89 Fed. Reg. 17,044-17,047 (§ 60.5365b)). In a vacuum, these requirements would not be problematic. Traditionally, operators have been required to calculate the potential for uncontrolled emissions—e.g., where a well generated 100 tpy of VOCs but had flare controls that eliminated 95% of emissions, that facility’s potential emissions would only be 5 tpy, thereby not triggering the requirements of § 60.5365b.”

....

“Thus, while almost all States have permitting requirements that mandate emissions controls at tank batteries in excess of 95%, operators cannot take credit for those controls under the Final Rule because there is as yet no mechanism to demonstrate that the State regulations meet EPA’s newly-created criteria. Practically, this means that operators who modify any existing oil storage facility must comply with § 60.5365b’s onerous requirements, just to demonstrate that the emissions control which were already installed and required under State law are “legally and practically” enforceable, all while generating zero emissions benefits.”

g. Fugitive emissions monitoring requirements

Industry application: “EPA initially proposed to use the amount of annual emissions of methane as a way to categorize wells and determine what fugitive emission monitoring and repair requirements would apply to different well sites - notably exempting from monitoring requirements smaller-producing well sites emitting less than three tpy (so-called “marginal” wells). See 86 Fed. Reg. at 63,118–21. The significant costs of conducting Optical Gas Imaging (“OGI”) monitoring do not outweigh the miniscule benefits such monitoring would provide at these marginal well sites which do not generate significant fugitive emissions. EPA nonetheless changed course in the Final Rule, and adopted arbitrary and capricious monitoring requirements

based on the number of pieces of certain types of equipment associated.” with a well site, ignoring numerous 32 comments explaining why equipment count should not be utilized over throughput or emissions to categorize well sites, to determine whether a well site was “small” (or marginal) and therefore exempt from OGI monitoring requirements. See App 327a, 410a (89 Fed. Reg. at 17,134, 17,217).

4. Merits Briefing Schedule

Petitioners' Briefs	11/25/2024
Intervenor For Petitioner's Brief	12/16/2024
Respondents' Brief	02/14/2025
Intervenors For Respondents' Briefs	02/28/2025
Petitioners' Reply Briefs	03/24/2025
Intervenor For Petitioner's Reply Brief	04/03/2025
Deferred Appendix	04/10/2025
Final Briefs	04/17/2025

REPORT ON USEPA METHANE RULE

OCTOBER 4, 2024

C. Introduction

On March 8, 2024, the United States Environmental Protection Agency (“EPA”) promulgated as a final rule “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” 89 Fed. Reg. 16,820 (Mar. 8, 2024) (“Rule”).

D. Litigation summary

The Rule has been challenged in the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) and in the Supreme Court of the United States (Supreme Court). The following are highlights of those challenges.

1. Parties to the litigation

a. Petitioners:

No. 24-1054: State of Texas; Railroad Commission of Texas; Texas Commission on Environmental Quality

No. 24-1059: State of Oklahoma; State of West Virginia; State of Arkansas; State of Alabama; State of Alaska; State of Florida; State of Georgia; State of Idaho; State of Indiana; State of Iowa; State of Kansas; Commonwealth of Kentucky; State of Louisiana; State of Mississippi; State of Missouri; State of Montana; State of Nebraska; State of North Dakota; State of Ohio; State of South Carolina; State of Tennessee; State of Utah; Commonwealth of Virginia; State of Wyoming; Arizona Legislature

No. 24-1101: Michigan Oil and Gas Association; Miller Energy Company II, LLC

No. 24-1103: Independent Petroleum Association of America; Arkansas Independent Producers and Royalty Owners; Domestic Energy Producers Alliance; Eastern Kansas Oil & Gas Association; Gas and Oil Association of West Virginia; Illinois Oil and Gas Association; Independent Petroleum Association of New Mexico; Indiana Oil and Gas Association; International Association of Drilling Contractors; Kansas Independent Oil and Gas Association; Kentucky Oil and Gas Association; National Stripper Well Association; North Dakota Petroleum Council; Ohio Oil and Gas Association; Oklahoma Independent Petroleum Association; Panhandle Producers and Royalty Owners Association; Pennsylvania Independent Oil & Gas Association; Permian Basin Petroleum Association; Petroleum Association of Wyoming; Texas Alliance of Energy Producers; Texas Independent Producers and Royalty Owners Association; Western Energy Alliance

No. 24-1111: GPA Midstream Association

No. 24-1114: Texas Oil and Gas Association

No. 24-1115: Interstate Natural Gas Association of America

No. 24-1116: American Petroleum Institute

No. 24-1117: American Exploration & Production Council

No. 24-1118: Air Alliance Houston; Clean Air Council; Environmental Integrity Project

b. Respondents:

Respondents are the United States Environmental Protection Agency and Michael S. Regan, Administrator for the United States Environmental Protection Agency.

c. Intervenors supporting petitioners:

Continental Resources, Inc. is an Intervenor-Petitioner.

d. Intervenors supporting respondents:

Commonwealth of Massachusetts; Commonwealth of Pennsylvania; District of Columbia; State of California; State of Colorado; State of Connecticut; State of Delaware; State of Illinois; State of Maine; State of Maryland; State of Michigan;

State of New Jersey; State of New Mexico; State of New York; State of North Carolina; State of Oregon; State of Rhode Island; State of Vermont; State of Washington; State of Wisconsin; Center for Biological Diversity; Clean Air Council; Dakota Resource Council; Earthworks; Environmental Defense Fund; Environmental Law & Policy Center; Food & Water Watch; Fort Berthold Protectors of Water and Earth Rights; Green Latinos; Natural Resources Defense Council; and Sierra Club are Intervenor-Respondents.

5. Motions for Stay

Several motions to stay the Rule were filed with the DC Circuit by states and others. Those motions were denied by the Court on July 9, 2024. The Texas motion contains a declaration in support of staying the Rule that was offered by the Texas Director of the Office of Air. In addition, several declarations from the Oklahoma/West Virginia motion for stay contain statements of concern about the Rule that have been offered by state officials in the following states: West Virginia, Oklahoma, Alaska, Virginia, North Dakota, Utah, Montana, Alabama, Ohio, Idaho, South Carolina, and Tennessee.

6. Emergency Application for Stay

On August 23, 2024, the State of Oklahoma and 22 other states filed an emergency application for stay of the methane rule with the Supreme Court of the United States.

https://www.supremecourt.gov/DocketPDF/24/24A213/323306/20240823171854848_Oklahoma%20v.%20EPA%20-%20Application%20For%20Stay.pdf.

On August 26, 2024, industry applicants (Continental Resources et al.) also file an application for stay of the Rule with the Supreme Court.

https://www.supremecourt.gov/DocketPDF/24/24A215/323400/20240826153558627_FINAL%20Continental%20Resources%20Immediate%20Stay%20Application%20Methane%20Rule.pdf

On September 20, 2024, EPA filed its response to the applications for stay.

https://www.supremecourt.gov/DocketPDF/24/24A215/326469/20240920144052131_24A215%20Govt%20Response%20to%20Stay%20Appls.pdf

Also on September 20, 2024, Environmental & Health Respondent' filed their opposition to the applications for stay.

https://www.supremecourt.gov/DocketPDF/24/24A215/326490/20240920153754530_NGO%20OSCOTUS%20Stay%20Opposition%20Methane%20FINAL%20Sept%2020%202024.pdf

Also on September 20, 2024, State-Respondent-Intervenors' filed their opposition to the applications for stay.

https://www.supremecourt.gov/DocketPDF/24/24A215/326457/20240920140332056_Nos.%2024A213%2024A215%20California%20et%20al.%20Opposition.pdf

On October 4, 2024, the Supreme Court denied the applications to stay the Rule pending resolution of challenges to the merits of the Rule.

The following excerpts from the state and industry applications highlight the portions of the rule that were identified to the Supreme Court as issues of concern. These points suggest areas that may be raised in briefing on the merits of the Rule currently pending before the D.C. Circuit.

a. Presumptive Standards of Performance

State application: "In the Rule, EPA did not limit itself to its statutory role for existing sources and then leave it to the States to adopt appropriate standards of performance. See 42 U.S.C. § 7411(d)(1); West Virginia, 597 U.S. at 710. Instead, the Rule lists specific technologies and methods for States to adopt in their Section 111(d) plans...."

....

"The Rule's "presumptive standards" represent EPA's attempts to gut the States' standard-setting authority under Section 111(d). As explained above, Section 111(d) gives States the authority to adopt standards of performance for existing sources, with EPA serving only as a reviewer for compliance with the Act. Supra pp.15–16. The Rule impermissibly flips the federal-state structure in Section 111(d) on its head, essentially requiring EPA-set standards as the default. The Rule even admits as much, stating in a footnote that the "presumptive standards - 20 - would serve as a guide to the development of a Federal plan," even as EPA claims that they "are not the same as a Federal plan under CAA section 111(d)(2)."

b. Two-year Deadline

State application: “Specifically, EPA did not explain how the Rule’s two-year deadline provides States with sufficient time to develop their own standards of performance under Section 111(d) rather than simply adopt EPA’s “presumptive standards.” This is especially so for State-Applicants like Oklahoma, who must regulate for the first time methane and VOC emissions from hundreds of thousands of new and diverse oil and gas facilities. See *Ohio*, 144 S. Ct. at 2053; *State Farm*, 463 U.S. at 43–44.”

“As many State-Applicants explained to EPA in comments during the rulemaking process, many States absolutely need at least three years to prepare a state plan under Section 111(d), given that the Rule contemplates many States regulating for the first time hundreds of thousands of diverse oil and gas facilities.”

c. Super Emitter Program

Industry application: “Nonetheless, EPA claims its authority to delegate its monitoring and enforcement authority “is based on EPA’s authority under CAA Section 114(a) to require ‘any person who owns or operates an emission source’ (except mobile sources) to provide information necessary for purposes of carrying out the CAA and its authority to regulate sources under CAA Section 111.” App. 70a (89 Fed. Reg. at 16,877). CAA Section 114(a) establishes requirements on owners or operators of emissions sources to report and provide information to EPA. CAA Section 114 does not grant authority to third parties, who do not own or operate emission sources to collect or report such information, or allow EPA to delegate any of its information gathering authority to such third parties. See 42 U.S.C. § 7414(a)(1); 42 U.S.C. § 7414(b)(1) (noting that EPA’s administrator may only “delegate to such State any authority he has to carry out this section.” (emphasis added)). Nothing in the CAA 17 gives EPA the authority to delegate its information gathering power to private parties or impose penalties on Industry Applicants based on reports generated by unlawfully deputized private parties.”

d. BSER for Associated Gas

Industry application: “In the Final Rule, EPA selected a BSER for associated gas of “rout[ing] associated gas to a sales line” that effectively prohibits flaring. App 23a (89 Fed. Reg. 16,833). Under section 60.5377b of the Final Rule, operators of a well

that produces associated gas have only four options under the BSER: (1) routing (recovering) the associated gas into a sales line; (2) using the associated gas onsite as a fuel source; (3) using the associated gas for another useful purpose; or (4) reinjecting the recovered associated gas into the well or another well. The BSER, therefore, essentially prohibits new sources from flaring associated gas. See App. 246a (89 Fed. Reg. at 17,053 (§ 60.5377b)).⁴ These BSER requirements can only be avoided if an operator makes a technical infeasibility demonstration showing that all of the BSER options are technically impossible (which demonstration cannot take cost into account). App. 144a (89 Fed. Reg. at 16,951)."

e. Net Heating Value Monitoring Requirements

Industry application: "Section 60.5417b of the Final Rule requires operators of new sources that route emissions to a flare to "[c]ontinuously monitor or collect a sample of the inlet gas to the enclosed combustion device or flare twice daily to determine the average NHV of the gas stream for 14 consecutive operating days." App. 298a (89 Fed. Reg. at 17,105). These requirements are literally impossible given the intermittent flow of gases to flares. App. 430a at ¶37. Gas flow to a flare may occur for as little as a few minutes at a time, making continuous monitoring or collection of a single one-hour sample impossible, let alone the 28 one-hour samples over 14 consecutive days as required by the Final Rule impossible. Id."

f. Enforceable limits for storage tanks

Industry application: "The Final Rule requires new or reconstructed "batteries" of oil storage tanks with the potential for emissions of 6 tons per year ("tpy") of VOCs or 20 tpy of methane to comply with new LPE requirements, including: initial emissions testing, initial NHV testing, continuous flow monitoring, monthly visual observations for emissions, and recordkeeping and reporting requirements. App. 237a-240a. (89 Fed. Reg. 17,044-17,047 (§ 60.5365b)). In a vacuum, these requirements would not be problematic. Traditionally, operators have been required to calculate the potential for uncontrolled emissions—e.g., where a well generated 100 tpy of VOCs but had flare controls that eliminated 95% of emissions, that facility's potential emissions would only be 5 tpy, thereby not triggering the requirements of § 60.5365b."

....

“Thus, while almost all States have permitting requirements that mandate emissions controls at tank batteries in excess of 95%, operators cannot take credit for those controls under the Final Rule because there is as yet no mechanism to demonstrate that the State regulations meet EPA’s newly-created criteria. Practically, this means that operators who modify any existing oil storage facility must comply with § 60.5365b’s onerous requirements, just to demonstrate that the emissions control which were already installed and required under State law are “legally and practically” enforceable, all while generating zero emissions benefits.”

g. Fugitive emissions monitoring requirements

Industry application: “EPA initially proposed to use the amount of annual emissions of methane as a way to categorize wells and determine what fugitive emission monitoring and repair requirements would apply to different well sites - notably exempting from monitoring requirements smaller-producing well sites emitting less than three tpy (so-called “marginal” wells). See 86 Fed. Reg. at 63,118–21. The significant costs of conducting Optical Gas Imaging (“OGI”) monitoring do not outweigh the miniscule benefits such monitoring would provide at these marginal well sites which do not generate significant fugitive emissions. EPA nonetheless changed course in the Final Rule, and adopted arbitrary and capricious monitoring requirements based on the number of pieces of certain types of equipment associated.” with a well site, ignoring numerous 32 comments explaining why equipment count should not be utilized over throughput or emissions to categorize well sites, to determine whether a well site was “small” (or marginal) and therefore exempt from OGI monitoring requirements. See App 327a, 410a (89 Fed. Reg. at 17,134, 17,217).

7. Merits Briefing Schedule

Petitioners' Briefs	11/25/2024
Intervenor For Petitioner's Brief	12/16/2024
Respondents' Brief	02/14/2025

Intervenors For Respondents' Briefs	02/28/2025
Petitioners' Reply Briefs	03/24/2025
Intervenor For Petitioner's Reply Brief	04/03/2025
Deferred Appendix	04/10/2025
Final Briefs	04/17/2025

III. EDF Information

1. EDF response re: impacts to owners of marginal wells

<https://blogs.edf.org/markets/2024/06/07/clearing-the-air-how-new-rules-for-oil-gas-facilities-offer-major-wins-for-the-environment-and-economy/>

a. Regulations have low compliance rates-some of which are offset by gas savings.

i. In 2025, costs are projected to be a mere 0.02% of industry revenue, with related capital expenditures accounting for just 0.2% of total industry capital expenditures.

b. Marginal well operators have flexibilities including delayed implementation dates

i. EPA estimates annual monitoring costs for small wells to be between \$336 and \$630. It costs tens of thousands of dollars to operate marginal wells yearly so compliance costs are not likely to be a driving factor for well closures.

c. Funding is available to help marginal well operators P&A wells

d. Many marginal wells are owned by companies who also own producing wells and therefore can use resources from producing wells to plug marginal wells.

e. Marginal wells are not low emitting and thus it is important that leaks from such wells are addressed. [Marginals wells are disproportionately high polluters](#), responsible for *half of all methane pollution* from well sites while generating just a trickle of useable product—less than 10% of U.S. oil and gas.

2. Funding opportunities for owners of marginal wells

a. Two rounds of funding from EPA and DOE. First was for \$350 to states and included funding to help support environmental restoration of well sites and monitor the sites to verify that plugged wells are no longer emitting methane. Dec. 2023.

<https://www.energy.gov/fecm/funding-notice-ira-mitigating-emissions-marginal-conventional-wells>.

See also EPA RTC, [Response I-20-23](#), <https://downloads.regulations.gov/EPA-HQ-OAR-2021-0317-4009/content.pdf>

" To mitigate the impact of orphaned wells, the Inflation Reduction Act (IRA) provides \$700 million for methane and greenhouse gas mitigation activities for conventional marginal wells. The Department of Energy and the EPA have issued a joint Notice of Intent to provide grants up to \$350 million for conventional marginal well plugging as an initial effort to distribute

the IRA funds. The goal of marginal well funding from the IRA is to offset the cost of plugging low producing wells. Additionally, the federal money reduces the possibility that the operator files for bankruptcy and orphans their well(s).

b. Second round of funding in June 2024 was for \$850 million and this included some funds to help plug marginal conventional wells, as well as other methane mitigation activities. <https://www.epa.gov/newsreleases/epa-doe-announce-850-million-reduce-methane-pollution-oil-and-gas-sector>. Per EDF analysis, of the \$850 million from the 2024 funding announcement, \$3.5 million from the 1st and 2nd areas of interest are available for methane reductions at marginal and low producing wells. Plugging of marginal conventional wells is one of the solutions for which grantees can use the funds. <https://blogs.edf.org/energyexchange/2024/06/27/unpacking-the-biden-administrations-announcement-of-850-million-to-tackle-oil-and-gas-methane-emissions/>

3. Rule applies to owners and operators of wells, not to states that have taken over abandoned or orphaned wells. Response II-20-66, <https://downloads.regulations.gov/EPA-HQ-OAR-2021-0317-4009/content.pdf>. "The EPA is finalizing well closure requirements, but no requirements are being finalized for abandoned wells, unplugged wells, or wells that are plugged insufficiently."

4. Congress exempted wells that are permanently shut in and plugged in the previous year with all applicable closure requirements, as determined by the Administrator, from being subject to the waste emissions charge. 42 USC § 7436(f)(7). EPA has proposed requirements to implement this. 89 FR 5318, 5347(Jan. 26, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-26/pdf/2024-00938.pdf>.

IV. Initial O&G Regulator Questions to Build Upon

- Effect of the rule on orphan well programs that must permanently vent a well. Does anyone owe a fine?
- Effect of the rule for functioning pop-off valves and other safety measures?
- Who is responsible for orphan wells on private property. Will private property owners be fined?
- Will the state be held responsible for leaking orphan wells and owe fines?
- Is the off-gasing of pits or frac tanks subject to the rule?
- Are domestic wells subject to OOOOC monitoring and reporting requirements? These are wells that produce gas from oil or gas well for domestic use.
- Does OOOOb and OOOOc preempt state oil and gas directors/commissions in authorizing venting and flaring determined to be necessary to prevent waste under state oil and gas statutes?
- Do state oil and gas directors/commissions have any ability to inform the EPA OOOOb decision makers regarding annual approvals of flaring for certain well types?