

June 6, 2023

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

Dear Administrator Regan:

I am writing to convey my strong concerns about the Environmental Protection Agency's (EPA) selective implementation of the *Inflation Reduction Act*, which has led to delays delivering Congressionally mandated funding for methane emissions reductions and a lack of timely guidance for the energy industry to implement the Methane Emissions Reduction Program (MERP).¹ The Congressional intent behind this provision is crystal clear: the EPA was directed to provide financial support to energy companies to reduce methane emissions before any new fees would be assessed. Unfortunately, nearly 10 months later, not a single penny of funding has gone out the door. Furthermore, zero guidance has been given to our industry partners on how the MERP will be implemented to allow them sufficient time to take steps to reduce emissions and avoid EPA fees. To honor Congressional intent and preserve our nation's energy security, fees on methane emissions should be postponed until at least a year after funding and guidance have been issued.

Congress specifically provided \$1.55 billion, available beginning in Fiscal Year 2022, in the MERP to help our oil and gas producers reduce methane releases to levels consistent with industry targets before any fees on excessive emissions would be issued. This funding was intentionally sequenced to ensure that the MERP is constructive, not punitive to the industry that provides much-needed energy to the nation and our allies. In the nearly ten months since the IRA was enacted, EPA has not made any MERP funding available, nor has EPA even announced when funding will become available. It is vital that this funding be made available as quickly, easily, and to as many entities as possible to help them proactively reduce their emissions and avoid any EPA fees. EPA has demonstrated the capability to move through the funding process more quickly for other IRA programs that the administration prefers, such as the Greenhouse Gas Reduction Fund and the Climate Pollution Reduction Grants.²

EPA has also failed to provide any guidance to operators on how the agency will use emissions data to calculate fees. It is impossible to upend complex operations in response to last-minute EPA guidance or regulations without risking supply disruptions or putting communities and workers at risk. A matter of months for industry implementation simply isn't a sufficient or reasonable amount of time for energy companies to adjust to reduce emissions and avoid fees.

¹ 42 U.S.C. § 7436.

² EPA, [Funding Announcements from the Bipartisan Infrastructure Law and Inflation Reduction Act](#).

EXHIBIT A

EPA has clearly missed the boat to implement this program in a fair manner, consistent with Congressional intent, for 2024 emissions. As such, I urge you to delay assessing fees until operators have been given at least one year to deploy the funding appropriated by Congress and react to relevant MERP guidance or regulations from the agency.

I also want to highlight several important considerations for when EPA does establish guidance or regulations for responsible implementation of the MERP. EPA must set clear and reasonable expectations regarding who is subject to the fee and how emissions levels will be calculated.

Examples of key issues EPA should address include:

- The statute clearly intends to exempt marginal wells and smaller producers from the fee.³ EPA must make it clearly understood that those entities not subject to the current Subpart W Greenhouse Gas Reporting Program are not subject to EPA fees under MERP.
- The MERP mandates that EPA revise Subpart W to make it more empirically based and allow for the use of individual estimates for emissions levels based on company-specific analyses.⁴ EPA must improve the accuracy and quality of its emissions factors, and EPA must provide operators a straightforward process for using the data they have available when reporting emissions. For example, MERP fees should not be calculated using arbitrary emissions factors based on metrics like “miles of gathering pipeline” for operators who have facility-based measurements that more accurately assess actual leaks, unrealistic assumptions like constant operation of pneumatic devices, or treating all compressors as having the same degree of methane slip when operators have data showing their actual facilities are performing better.
- EPA should draw reasonable boundaries around the definition of individual “facilities” (such as pad site, compressor site, or reporting field) for emissions intensity calculations so that aggregations of large amounts of disparate wells and gathering lines does not lead to charging a fee on marginal facilities that Congress intended to exempt or on facilities that have minimal actual emissions.
- To assist individuals and small businesses engaged in energy production, EPA should provide a publicly available, easily understandable explanation of the calculation method for CO₂-equivalent emissions, methane intensity, and other key calculations necessary to understand the requirements of MERP.
- Fee calculation methodologies should be flexible and equitable to account for the wide range of oil and gas operations. For example, an operator primarily producing natural gas will be affected differently than one primarily producing crude oil with limited amounts of associated gas.

³ 42 U.S.C. § 7436(c).

⁴ 42 U.S.C. § 7436(h).

EXHIBIT A

Additionally, I request an update on the following matters so that both Congress and stakeholders can have a better sense of EPA's implementation plans for the MERP:

1. Will the EPA issue guidance or formal regulations for implementing the MERP? If so, will the agency seek input from entities subject to MERP and other stakeholders on draft implementation guidance or regulations?
2. How much time will businesses subject to the MERP fee have to reduce their emissions to avoid a fee after EPA has made funding available and published any implementation guidance or regulations?
3. Please provide a timeline and "roadmap" of your plans for implementing the MERP, including target dates for EPA to:
 - a. Propose any MERP implementation guidance or regulations and solicit input on those documents before finalizing them.
 - b. Announce and award funding to energy companies under 42 U.S.C. 7436(a) and (b).
4. How will EPA implement the MERP to prevent an excessive burden falling on marginal well producers and small businesses that could threaten their operations? Will EPA consult with the Small Business Administration (SBA) regarding the MERP implementation?
5. What other agencies, if any, will EPA consult before implementing MERP?
6. What procedures are being developed to ensure that operators will be able to clearly understand their reporting and calculation requirements?
7. How does EPA plan to communicate to operators emitting below 25,000 metric tons/year of CO₂-equivalent emissions that they are not subject to the fee program?
8. What will be the process for appealing or disputing a fee if a business believes a fee has been assessed incorrectly?
9. What process is EPA developing to ensure that the MERP emissions fee is not applied to operators complying with EPA Subpart OOOOb and OOOOc regulatory requirements once these regulations are in place?

Because EPA has failed to communicate progress on MERP implementation in a timely manner, time is of the essence for EPA to address the concerns I have raised above. Therefore, please respond to the above question by June 20, 2023. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Manchin III". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joe Manchin III
Chairman