

Congress of the United States
Washington, DC 20515

July 19, 2023

The Honorable Michael S. Regan
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: ND Delegation Concerns with EPA Proposed Methane Rule

Dear Administrator Regan:

As members of North Dakota’s congressional delegation, we write to express our serious concerns with the Environmental Protection Agency’s (“EPA”) proposed methane rule, published in the Federal Register on December 6, 2022.¹ At a time when this country should be doing all it can to improve energy security and independence, and reduce reliance on foreign suppliers, EPA has instead proposed a rule that would weaken the domestic energy industry through burdensome restrictions on oil and gas operations. If finalized, the rule would mandate prescriptive technologies, practices, and procedures across the country, without consideration of performance-based standards or the different situations in each state and producing field. In particular, the proposed rule would have significant negative impacts on the state of North Dakota and its residents. For the reasons outlined below, we request EPA withdraw or make significant revisions to the proposed rule.

I. Disproportionate Impact on North Dakota Operators
A. Restrictions on Flaring Associated Gas

In North Dakota, energy producers must manage increasing volumes of gas associated with oil production, and the proposed rule’s restrictions on flaring of associated gas would disproportionately impact operators in the region. While natural gas pipeline capacity in the state has grown over the years, based on the remote nature of operations, there are still cases where natural gas pipelines are not readily available, particularly on federal and tribal lands where permitting issues impede infrastructure deployment. Even when available, issues such as product incompatibility with infrastructure, third-party maintenance, market conditions, or extreme cold weather can all restrict an operator’s ability to send gas to pipelines for sales. Similarly, the unique geography and extreme cold weather in the region can make other beneficial uses of the gas infeasible. In some cases, an alternative to flaring may impose greater costs than the value of the gas itself. In such situations, operators cannot be expected to forgo flaring which eliminates 98 percent or more of the methane. To do so would be inconsistent with the mandate of the Clean Air Act, which expressly requires consideration of costs by EPA when establishing New Source Performance Standards (“NSPS”).

As a result, EPA’s unnecessarily restrictive approach will leave many operators with no option but to shut-in production. Any reduction in production would also reduce royalties, directly impacting

¹ 87 Federal Register 74702 (December 6, 2022).

the livelihoods of North Dakotans and members of the Three Affiliated Tribes that rely on this key source of revenue. Further, if operators are unable to comply with EPA's burdensome regulations in North Dakota, they may shift operations out of state, drastically reducing production and associated income. In fiscal year 2022, taxes on North Dakota oil and gas operations generated over two billion dollars to fund services for the people of North Dakota. These revenues support schools, infrastructure, improvements such as flood control projects, environmental reclamation activities, and tax relief for residents throughout the state. Any regulation that reduces or disincentivizes production operations will reduce available funds for these important efforts and harm North Dakotans.

B. Impacts on Small Producers

Small oil and natural gas producers are key contributors to North Dakota's economy. In addition to paying royalties and taxes, these producers create jobs for North Dakotans directly through employment and indirectly through supporting local businesses. However, small producers often have thin margins restricting their operational flexibility. EPA's proposed rule would impose costly additional requirements on single wellhead sites, many of which are owned by small, independent producers. Small producers are disproportionately impacted by the proposed rule due to the high costs of equipment needed for compliance. They also face a potential lack of availability of equipment, as compared to large producers.

Further, EPA's prescriptive compliance requirements will limit operational flexibility and prevent small producers from implementing innovative new approaches. Once EPA's rule becomes effective, many small producers will find that their operations are now uneconomical. As a result, EPA's proposed rule will force many small producers out of business, thereby reducing royalties, taxes, and jobs within our states.

II. Conflict with State Programs

EPA's proposed rule conflicts with core principles of federalism and states' rights by undermining state regulatory programs implemented by the North Dakota Industrial Commission ("NDIC") and North Dakota Department of Environmental Quality ("NDDEQ"). The NDIC has already reduced flaring significantly via implementation and enforcement of gas capture goals. As of April 2023, statewide gas capture in North Dakota was 95 percent. The NDIC also has a robust program covering plugging and abandonment of oil and gas wells. EPA's proposed additional restrictions on flaring and well closure requirements fly in the face of the NDIC's efforts and authority.

The NDDEQ investigates and enforces violations of North Dakota's air regulations, including enforcement of federal regulations delegated to North Dakota under the Clean Air Act. NDDEQ has effectively implemented this delegated authority for decades. Yet, EPA's proposed super-emitter response program would deputize third parties to encroach on NDDEQ's delegated authority. Responding to third parties, likely with limited experience, will undermine NDDEQ's existing investigative process and create unnecessary churn for the agency. To add to this issue, EPA has released no guidance on how it expects states to implement the super-emitter response program, raising additional concerns with the scope and degree of NDDEQ's oversight in this process.

III. **Increases State Expenses and Burdens**

EPA's proposed rule will impose additional costs on North Dakota agencies. NDDEQ required multiple additional full-time employees and millions of dollars in appropriated funds to accept delegation of NSPS OOOOa several years ago. EPA's proposed rule creates new obligations on new sources and would require regulation of existing sources as well. This goes well beyond the scope of NSPS OOOOa and will require significantly more resources for NDDEQ to implement. However, EPA has provided no additional funding for the state. In fact, the rule is likely to diminish state funds via reductions in royalties and taxes. The proposed rule's unfunded new mandates will strain the NDDEQ's ability to adequately enforce its existing regulations.

IV. **Conclusion**

Thanks to innovation, technology, and regulatory flexibility, North Dakota has played a key role in making the United States the world's top oil and gas producer and a net exporter to global markets. At the same time, due to American innovation the U.S. has led the world in emissions reductions since 2005. Maintaining our nation's capacity to produce oil and gas is vital to protecting our economic and national security interests. Unless EPA reverses course, the proposed rule will drive up consumer energy costs and increase U.S. reliance on energy imports, including from adversarial foreign nations with little to no regard for environmental or labor standards.

Accordingly, we request that EPA withdraw or make significant revisions to the proposed methane rule that fully addresses our concerns and the significant disproportionate impact on the state of North Dakota, and our constituents. Thank you for your consideration.

Sincerely,



John Hoeven
US Senator



Kevin Cramer
US Senator



Kelly Armstrong
Member of Congress