

ALERT

ENERGY & NATURAL RESOURCES



EPA's Proposed New Oil and Gas Methane Requirements: Where We Are and Where We Are Going

The U.S. Environmental Protection Agency (EPA) has pledged to issue, within days from now, proposed new Clean Air Act (“CAA” or “Act”) requirements for methane emissions from the oil and gas sector. EPA’s forthcoming proposal is expected to broaden the scope of its current methane regulations for new, modified, or reconstructed sources within the oil and gas sector. In addition, for the first time, EPA will propose nationwide methane emission guidelines for existing sources within the sector that individual states will be responsible for implementing. As the oil and gas sector awaits the new proposed methane requirements, this *Alert* summarizes the important and rare developments that have unfolded in the relatively brief history of EPA regulating methane emissions from the oil and gas sector.

Obama Administration Issues Initial Regulations of Methane Emissions from Oil and Gas Sector. EPA issued its first set of oil and gas methane-specific emission regulations in 2016 during the Obama administration. The 2016 regulations amended the then-current new source performance standards (NSPS) and promulgated new standards to directly regulate emissions of methane, as well as volatile organic compounds (VOC), from new, modified, and reconstructed equipment, processes, and activities across the entire oil and gas sector. The 2016 amendments to the NSPS were codified at 40 C.F.R. Part 60, Subpart OOOOa (Subpart OOOOa).

Subpart OOOOa included specific limits on methane emissions for new, modified, and reconstructed sources within the production and processing segments of the oil and gas sector. It also included VOC and methane standards for emission sources in the transmission and storage segments, which were previously unregulated. Subpart OOOOa did *not* limit aggregate methane emissions from affected facilities within the oil and gas sector. Rather, it regulated specific emissions sources used at well sites, compressor stations, and processing plants. These sources include compressors, pneumatic controllers, pneumatic pumps, well completions, storage vessels, fugitive emissions from well sites and compressor stations, and equipment leaks at natural gas processing plants. 40 C.F.R. §§ 60.5360a–60.5439a (2016). Among its various requirements, Subpart OOOOa included leak detection and repair (LDAR) requirements for fugitive emission components well sites and compressor stations and certain equipment at natural gas processing plants. 40 C.F.R. §§ 60.5397a and 60.5400a.

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Trump Administration Promulgates Rule Rescinding Methane Requirements in Subpart OOOOa. EPA under the Trump administration finalized amendments to Subpart OOOOa on September 14, 2020, which were referred to as the “Policy Amendments.” Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 85 Fed. Reg. 57,018 (Sep. 14, 2020). After removing the transmission and storage segment from the NSPS for the oil and gas sector, the Policy Amendments rescinded the methane-specific requirements in Subpart OOOOa that applied to the production and processing segments, leaving only VOC-specific requirements for affected sources within the production and processing segments..

One day after promulgating the Policy Amendments, EPA issued a companion regulation known as the “Technical Amendments,” which revised certain remaining VOC-only requirements in Subpart OOOOa for the production and processing segments. Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration, 85 Fed. Reg. 57,398 (Sep. 15, 2020).

Congress Intervenes to Restore Methane Requirements in Subpart OOOOa. On June 30, 2021, President Biden signed into law a joint congressional resolution disapproving of the Policy Amendments rule. The resolution was issued under the Congressional Review Act (CRA), a statute granting Congress the time-limited authority to rescind administrative rules based on a simple-majority vote in both the Senate and the House of Representatives and signature by the president. The CRA resolution retroactively revoked the Policy Amendments rule, restoring the Obama administration’s NSPS for the oil and gas sector, including the methane-specific requirements of Subpart OOOOa.

More specifically, the CRA resolution, among other things, restored the Subpart OOOOa methane-specific requirements for sources in the production, processing, and transmission and storage segments that commenced construction, reconstruction, or modification after September 18, 2015. Because the Technical Amendments rule was unaffected by the CRA resolution, the VOC-only requirements contained therein remain in effect. From a legal standpoint, the CRA resolution means that affected sources within the production and processing segments, at least temporarily, have different technical requirements related methane and VOC emissions.

Looking Ahead to Proposed New Methane Requirements for the Oil and Gas Sector. EPA’s Acting Assistant Administrator for the Office of Air and Radiation has indicated that EPA will propose “updated” and “upgraded” rules for new, modified, and reconstructed emissions sources currently regulated under Subpart OOOOa. In addition, EPA will be proposing to significantly expand the scope of existing federal oil and gas methane regulations to include emissions guidelines for existing sources that are not regulated under Subpart OOOOa (unless and until the existing sources are modified or reconstructed).

Babst Calland is closely tracking EPA’s efforts to propose new methane requirements for the oil and gas sector. Regulated parties would be well-advised to prepare now to review, evaluate, and consider commenting on EPA’s proposed new methane requirements. If you have questions about Subpart OOOOa or the forthcoming new proposed methane requirements for the oil and gas sector, please contact Michael H. Winek at (412) 394-6538 or mwinek@babstcalland.com, Gary E. Steinbauer at (412) 394-6590 or gsteinbauer@babstcalland.com, or Gina N. Falaschi at (202) 853-3483 or gfaschi@babstcalland.com, or Christina Puhnaty at (412) 394-6514 or cpuhnaty@babstcalland.com.

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