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# Methane and VOC Rules Survive Another Day. The U.S. Supreme Court Refuses to Stay the Rules.

On October 4, 2024, in a one-sentence order, the U.S. Supreme Court denied requests in two lawsuits to halt implementation of the U.S. Environmental Protection Agency's (EPA) Methane Rule that sets new source standards and existing source guidelines that limit emissions of methane and volatile organic compound (VOC) pollution from oil and gas operations.

The order follows on the heels of the petitions of 24 states and Continental Resources to stay implementation of the new rules.

Three months ago, on July 9, a similar ruling by a three-judge panel in the U.S. Court of Appeals for the D.C. Circuit denied requests to halt the rule.

**The Methane Rule**

As the main component of natural gas, methane is one of the most potent greenhouse gases – more than 28 times more powerful than carbon dioxide.

The Methane Rule was published on December 2, 2023, and became effective on May 7, 2024, and includes a variety of compliance deadlines. It applies to oil and natural gas production and processing facilities and natural gas transmission and storage facilities.

Among other requirements, the Methane Rule:

1. Imposes flaring restrictions;
2. Requires owners and operators to routinely monitor for and repair natural gas leaks; and

3. Creates a new "Super Emitter Program" for reporting to the EPA events in which emissions exceed 100 kilograms of methane per hour.

The rule also requires coal-fired power plants to emit less lead and arsenic and other toxic pollutants. For some coal plants with historically looser limits on emissions of mercury, the rule requires those operations to release less mercury.

**Does EPA Have the Authority to Issue the Rule? What About the Chevron Doctrine?**

24 states and the Arizona Legislature Filed their petition on March 12, 2024, stating: "Petitioners will show that the final rule exceeds the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion, and not in accordance with law."

That's the central issue in the lower court challenges to the rules. The EPA says that Section 111 of the Clean Air Act gives the agency the authority to promulgate rules to limit emissions if those pollutants threaten the health and welfare of the public. The federal government argued that halting the implementation of the rule would postpone the methane reductions the EPA is trying to achieve and that could harm public health.

Petitioners argue the EPA has overstepped its authority. In addition, industry associations argued that some of the regulation's elements were either impractical or overly expensive.

The challenges to the Methane Rule follow the June 28, 2024, decision of SCOTUS in *Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce* that cut back on the power of federal agencies to interpret the laws they administer. In *Loper,* SCOTUS ruled that courts should rely on their own interpretation of ambiguous laws. By a vote of 6-3, the justices overruled their landmark 1984 decision in *Chevron v. Natural Resources Defense Council* which gave rise to the doctrine known as the *Chevron Doctrine*. Under that doctrine, if Congress has not directly addressed the question that was the gravamen of a dispute, a court was required to uphold the agency's interpretation of the statute as long as it was reasonable.

As I discussed in "Chevron's Two-Step Deference to Agency Expertise Overturned," in a 35-page ruling by Chief Justice John Roberts, the justices rejected the *Chevron Doctrine*, calling it "fundamentally misguided" as it did not comply with the strictures of the Administrative Procedures Act.*

**Key Things to Know About EPA's Final Rule**

EPA's Fact Sheet provides a summary of the rule.

The final rule is designed to reduce methane and other harmful air pollution from oil and natural gas operations focusing on:

- **New Source Performance Standards** designed to reduce methane and smog-forming volatile organic compounds from new, modified, and reconstructed sources.
- **Emissions guidelines** that set procedures for states to develop plans to limit methane from existing sources.
- **Leak detection and repair** requirements that require wells and compressor stations to conduct regular surveys for methane leaks and to repair them.
- **Well completion regulations** that focus on how flowback is routed during well completion.
- **Provision of additional time for leak repairs** to allow owners and operators to repair leaks if replacement components cannot be obtained and installed by the repair deadline.

The EPA estimates the rule will yield net climate and ozone health benefits of $97 billion to $98 billion from 2024-2038 and increased recovery of natural gas valued at $7.4 billion to $13 billion from 2024-2038.

The EPA is also working to implement the three-part framework of the Inflation Reduction Act's Methane Emissions Reduction Program which includes a Waste Emissions Charge that starts at $900 per metric ton for 2024 reported methane emissions.

**Stay Tuned**

The rules are still in jeopardy, however. SCOTUS's decision leaves the rules in effect for now, but they could ultimately be overturned through legal proceedings in lower courts.

*This blog was drafted by John L. Watson, an attorney in the Spencer Fane Denver, Colorado, office. For more information, visit www.spencerfane.com.*

* For an interesting critique suggesting that law school professors should not remove *Chevron* from their casebooks, see the Notice & Comment written by Nick Fromherz, Adjunct Faculty of Law at Lewis & Clark Law School.

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