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Submitted Via Federal eRulemaking Portal: <http://www.regulations.gov> (Docket ID No. EPA-HQ-OAR-2023-0434)

Re: bp America Inc. comments for EPA's proposed rule imposing a Waste Emissions Charge for Petroleum and Natural Gas Systems

Dear Mr. Ragnauth,

On behalf of bp America Inc. and its affiliates (collectively, "bp"), we are pleased to respond to your request for comments concerning the Waste Emissions Charge for Petroleum and Natural Gas Systems ("WEC").

bp is investing in America's energy system as we transition from an international oil company to an integrated energy company. With \$150 billion invested in the US since 2005, we employ more than 30,000 people and support more than 275,000 jobs. We have a bigger footprint here than anywhere else in the world, and we're proud to be a trusted partner for secure, affordable and reliable energy.

bp has long advocated for well-designed policy that puts a price on quantifiable greenhouse gas (GHG) emissions in all sectors of the economy on a CO2 equivalent basis. We believe a well-designed carbon pricing program provides the right incentives to decarbonize the entire economy, encourages innovation and can drive emissions reductions. While we would prefer a national emissions pricing program – and the broader, deeper markets this creates – we also support effective subnational programs. This has been demonstrated through our recent engagement on New York State's Cap

and Invest proposed program, Washington State's Climate Commitment Act, and numerous low carbon fuel standard programs.¹

While a fee on methane emissions can be an effective, market-based policy mechanism, we believe such a program would, at a minimum, need to: (1) encourage meaningful and cost-efficient reductions of methane emissions across the oil and gas value chain; and (2) support and incentivize innovative methane leak detection and measurement.

As proposed, we are concerned that the program does not sufficiently align with, nor would it materially accomplish, the two goals stated above. As explained in Section 1, we believe the program could drive inefficient allocation of capital by disallowing the use of netting at the parent level. We encourage EPA to design a methane fee program that encourages the most effective and efficient use of capital across a portfolio, optimizing for the lowest marginal abatement opportunities *first*, which requires modifications to parts of the program design.

bp has made it clear across our methane policy advocacy efforts in the US that we see significant potential for advanced methane detection and measurement technologies.² Regulation can play an important role in galvanizing the widespread deployment of technologies that enable higher frequency monitoring and more accurate data. Equally, regulation can put a chill on technology deployment if the incentives are misaligned. We are concerned that certain aspects of the proposed methane fee program may create disincentives to the use of advanced technology, including through the heavy-handedness with which the regulatory compliance exemption can be retracted due to deviations that could result from operators having more and better data collected from advanced technologies over time.

Further, we continue to stress the importance of harmonization of the final Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (Final Methane Rule), and the proposed Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems (Subpart W proposed rule), with the proposed WEC rule. bp has commented previously on both these rules and asks EPA to consider these comments, in addition to the ones detailed below, during their review.³

¹ See Carbon Pricing in the US, https://www.bp.com/en_us/united-states/home/who-we-are/advocating-for-net-zero-in-the-us/carbon-pricing-in-the-us.html

² See, e.g., EPA-HQ-OAR-2023-0234-0345, pp. 2–6 (bp's comments on the August 2023 proposed Subpart W revisions); EPA-HQ-OAR-2021-0317-2409, pp. 3-11 (bp's comments on the December 2022 supplemental OOOO proposal); EPA-HQ-OAR-2021-0317-0807, pp. 2-3, 5-10 (bp's comments on the November 2021 OOOO proposal). Comments are included as appendices.

³ See *id.*

In this letter, bp respectfully submits proposed modifications we consider critical to the workability and durability of the WEC, including:

1. An opportunity to incentivize continued emission reductions by allowing netting at the parent company level;
2. An opportunity to improve the regulatory compliance exemption by applying the exemption in a more flexible manner;
3. An approach to improve the proposed third-party audit process.

EPA should allow for netting at the parent level

Allowing netting of emissions across facilities “under common ownership or control” at the parent level would better serve the primary purpose behind the provision — incentivizing cost-effective methane emissions reductions across the oil and gas industry — and would be more consistent with the statute.

CAA Section 136(f)(4) provides that:

In calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).⁴

EPA proposes to interpret “facilities under common ownership or control” to mean facilities with the same “owner” or “operator” as those terms are defined in the proposed rule and under Subpart W.⁵ As EPA recognizes, this approach will often preclude netting at the parent level because companies in this sector typically own a variety of facilities, both within and across industry segments, through corporate subsidiaries that may play the role of “owner/operator” under the Subpart W regulations.⁶ For example, when it comes to onshore petroleum and natural gas

⁴ 42 U.S.C. § 7436(f)(4).

⁵ See 89 FR 5318, at 5328 (Jan. 26, 2024); see also *Id.* at 5368 (“*Onshore petroleum and natural gas production owner or operator* means the person or entity who holds the permit to operate petroleum and natural gas wells on the drilling permit or an operating permit where no drilling permit is issued, which operates a facility in the onshore petroleum and/or natural gas production industry segment (as that industry segment is defined in § 98.230(a)(2) of this chapter). Where petroleum and natural gas wells operate without a drilling or operating permit, the person or entity that pays the State or Federal business income taxes is considered the owner or operator” ... “*Operator* means, except as otherwise defined in this section, any person who operates or supervises a facility” ... “*Owner* means, except as otherwise defined in this section, any person who has legal or equitable title to, has a leasehold interest in, or control of an applicable facility, except a person whose legal or equitable title to or leasehold interest in the facility arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility shall not be considered an “owner” of the facility.”).

⁶ 89 FR at 5329.

production facilities, the “owner or operator” is defined as either the entity who holds the operating or drilling permit, or the entity that pays the business income taxes.⁷ That will frequently be the subsidiaries rather than the parent company.⁸ Thus, companies that own and control various onshore production facilities via subsidiaries may not be able to net emissions across those facilities.

We believe exclusion of parent companies from the netting provision would run counter to the central goal of incentivizing the greatest possible methane emissions reductions in the most cost-efficient manner. This principle is well recognized in other EPA programs that involve emissions averaging.⁹ The WEC netting provision serves this purpose well — it rewards operators that go beyond the minimum standard by allowing them to credit their extra emissions reductions below applicable thresholds. This principle is well recognized in other EPA programs that involve emissions averaging.¹⁰

This is especially important given that operators, like bp, commonly control facilities across different industry segments. Allowing a parent company to net emissions across all of the facilities that it commonly owns or controls would encourage emissions reductions more broadly across a wider group of affiliates under the common parent.

Conversely, narrowly interpreting the statutory terms could distort these incentives, discouraging reductions above and beyond the minimum. Take, for example, a hypothetical parent company that owns or controls, through subsidiaries, Facilities A and B, which are both subject to the WEC. If Facility A has emissions just below the methane threshold (and therefore will not be subject to the fee), under EPA’s proposal, the parent company would not be incentivized to implement *additional* emission reductions at Facility A — even if such reductions could be achieved in the most efficient manner, with the least cost, and even if it will cost Facility B more to reduce its emissions below the threshold. In this way, the proposed rule misses an opportunity

⁷ *Id.* at 5368.

⁸ *See id.* at 5329 (“For most facilities, the reported owner or operator is a subsidiary of the reported parent company”).

⁹ *See, e.g.*, U.S. EPA, “Building Flexibility with Accountability into Clean Air Programs,” available at: <https://www.epa.gov/clean-air-act-overview/building-flexibility-accountability-clean-air-programs> (explaining that “many EPA rules allow a company to comply with performance standards through averaging emissions” and that, in the context of averaging vehicle emissions, “greater emissions reductions can be achieved at less cost because manufacturers can choose the least costly ways to comply. The averaging system provides incentives for development and implementation of new technologies and makes it possible to achieve emissions reductions at a faster pace”).

¹⁰ *See, e.g.*, U.S. EPA, “Building Flexibility with Accountability into Clean Air Programs,” available at: <https://www.epa.gov/clean-air-act-overview/building-flexibility-accountability-clean-air-programs> (explaining that “many EPA rules allow a company to comply with performance standards through averaging emissions” and that, in the context of averaging vehicle emissions, “greater emissions reductions can be achieved at less cost because manufacturers can choose the least costly ways to comply. The averaging system provides incentives for development and implementation of new technologies and makes it possible to achieve emissions reductions at a faster pace”).

not only for additional emissions reductions, but also for rewarding development of the most cost-effective technological solutions for achieving such reductions. In the final rule, we encourage EPA to minimize distortions to the intended incentives to the extent possible.

Further, there is no indication that Congress intended to limit the netting provision to such a narrow interpretation. Congress uses the specific phrase “owner or operator” in other provisions of the WEC¹¹ and the CAA,¹² as well as in other environmental statutes,¹³ but did not use that phrase here. If Congress had intended to limit netting exclusively to facilities under the “direct” ownership, or under the “direct” control, of the same corporate entity, it could have used such language. Instead, the statute more broadly refers to all facilities “under common ownership or control.”

With respect to “control,” the statutory phrase “under common control” has been interpreted in other contexts, including by EPA, to include indirect control, such as by that of a parent company over its subsidiaries. For example, under EPA’s GHG regulations for light-duty vehicles — which establishes a regime for averaging GHG emissions across a manufacturer’s fleet of vehicles — EPA allows manufacturers under the common control of a parent company to be considered together for purposes of averaging GHG emissions across an entire vehicle fleet (as opposed to limiting averaging to each subsidiary manufacturer).¹⁴ Like the WEC, EPA’s light duty automobile GHG standards and the CAFE statute (which National Highway Traffic Safety Administration and EPA jointly administer) provide for averaging in order to encourage GHG and corresponding fuel economy improvements to be made as cost-effectively as possible. Based on statutory language referring to all automobiles “*under common control* with the manufacturer,” the standards provide for averaging (effectively, netting) across the parent company’s entire vehicle fleet.¹⁵

bp strongly encourages EPA to take a similar and consistent approach to the phrase “under common ownership or control” for the purposes of netting under the WEC. Under this approach, a parent company would be able to net emissions among all facilities belonging to subsidiaries in which it has an ownership interest or a sufficient degree of control. To do so, EPA would not need to revise the definitions of “owner” or

¹¹ See, e.g., 42 U.S.C. § 7436(c).

¹² See, e.g., 42 U.S.C. § 7411(a) (“The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source”).

¹³ See, e.g., 42 U.S.C. § 9601(20); see also *United States v. Bestfoods*, 524 U.S. 51 (1998) (construing the phrase “owner or operator” as used in CERCLA to mean a parent company either when there is sufficient control that the corporate veil can be pierced or when the parent acts as the operator of the facility itself).

¹⁴ EPA intended its approach to align with NHTSA’s Corporate Average Fuel Economy (CAFE) program. See 40 C.F.R. § 86.1818–12(b)(3) (cross-referencing “the meaning given by the Department of Transportation at 49 CFR 531.4”); see also 76 Fed. Reg. 39478, 39,512 (July 6, 2011) (explaining that EPA’s goal is to “ensure that manufacturers are treated identically by EPA and NHTSA programs”).

¹⁵ 49 U.S.C. § 32901(a)(4) (emphasis added).

“operator” in either the proposed rule or in the Subpart W context. The proposed definition of the “WEC Obligated Party” could simply be broadened to include, as an option, a parent company of the entity (i.e., the facility owner or operator) that reports under Subpart W. As EPA notes in the proposed rule, a “parent company” could represent up to the “highest-level company based in the United States with an ownership interest in the facility.”¹⁶ To simplify the administration of the netting provision, EPA could deem all facilities belonging to a Subpart W reporter, in which the parent company has at least a controlling shareholder interest, to be presumptively “under common ownership or control.”

For all these reasons, to ensure the emissions reductions goals of the WEC are achieved, EPA should interpret “under common ownership or control” to allow for netting at the parent level.

The regulatory compliance exemption should be applied in a more flexible manner to incentivize methane detection and measurement innovation

We are concerned that EPA’s proposal to make facilities ineligible for the regulatory compliance exemption on the basis of *any* deviation or violation could discourage the use of more advanced monitoring technologies, undermining one of the central pillars of EPA’s methane emissions program. Specifically, EPA’s proposal provides that facilities would not be eligible for the regulatory compliance exemption if it discovers *any* deviation or violation of *any* NSPS or EG OOOO provision.¹⁷ The final OOOO methane rules represent a sprawling regulatory program, including extensive recordkeeping and reporting obligations. As EPA recognizes, there are many ways that an operator might deviate from the OOOO rules based on minor regulatory requirements that have little or no environmental impact.¹⁸ In order to avoid this counterproductive result, we recommend that facilities should only become ineligible for the regulatory exemption when (a) there is a proven or admitted *violation* (e.g., through a settlement or consent agreement) that (b) resulted in substantial methane emissions.

EPA has made clear in other contexts that it does not consider all deviations from a compliance program to be a violation. For example, EPA’s “Audit Policy” — which is broadly aimed at encouraging self-reporting of permit deviations and violations of environmental laws — defines a “violation” to “include[] any violation subject to a Federal, State or local civil judicial or administrative order, consent agreement, conviction or plea agreement.”¹⁹ In other words, a violation is not simply any self-reported deviation, but rather when EPA or the state regulator takes some formal enforcement action that results in a determination of a violation. Similarly, for Title V

¹⁶ See 89 FR at 5329.

¹⁷ See *id.* at 5344.

¹⁸ See *id.* at 5344-45.

¹⁹ 65 Fed. Reg. 19618, 19623 (Apr. 11, 2000).

permits under the Clean Air Act, EPA has clarified that “a deviation is not always a violation.”²⁰ EPA should take a consistent approach here by providing that minor, self-reported “deviations” that do not become subject to formal, discretionary enforcement actions would not render a facility ineligible for the compliance exemption. Only *violations* proven or admitted through formal enforcement actions would do so.

In addition, in our view, violations of administrative requirements, such as reporting errors, should not result in the removal of the regulatory exemption. Instead, only violations that actually result in substantial methane emissions should remove access to the regulatory exemption. We recommend EPA establish a materiality threshold before facilities are rendered ineligible. Doing so would be consistent with the widespread understanding that the vast majority of the emissions inventory comes from larger leaks or emissions events, rather than very minor ones. Moreover, the purpose of the regulatory exemption is to encourage “compliance with *methane emissions requirements*.”²¹ We believe minor administrative deviations that carry no emissions consequences do not serve this purpose.

Importantly, focusing on violations that result in substantial methane emissions would help to ensure that the rule does not discourage the use of advanced methane monitoring technologies, such as continuous monitoring systems. Recognizing the benefits of these technologies, EPA has sought to encourage their adoption by allowing the use of advanced technologies to comply with the OOOO rules, and by moving the Subpart W GHG reporting program toward more empirical emissions monitoring and measurement methods.²² bp has consistently supported the inclusion of advanced methane monitoring technologies in EPA’s methane regulatory and GHG reporting programs.²³ We believe that such technologies can play an important role in reducing emissions across our operations, and to this end, have implemented a robust, multi-technology methane monitoring and measurement program across our upstream operations.²⁴

An overly broad interpretation of “compliance” under the WEC’s regulatory compliance exemption, however, could discourage the use of such technologies, as operators may be penalized for more rigorous monitoring. The use of more rigorous and accurate methane monitoring technologies will generate a significant amount of complex emissions data. While these data will be highly beneficial, they could also alert operators to “deviations” from the OOOO rules that they may not have detected

²⁰ 40 CFR § 71.6(a)(3)(iii)(C). EPA’s regulations explain that a “deviation means any situation in which an emissions unit fails to meet a permit term or condition” (e.g., an exceedance of an emissions standard, or noncompliance with a work practice requirement). *Id.*

²¹ 42 U.S.C. § 7436(f)(6)(A) (emphasis added).

²² See 89 FR 16,820, at 16,873 (March 8, 2024); see also 88 FR 50,282, 50,284–285 (August 1, 2023).

²³ See, e.g., EPA-HQ-OAR-2023-0234-0345, pp. 2–6; EPA-HQ-OAR-2021-0317-2409, pp. 3-11; EPA-HQ-OAR-2021-0317-0807, pp. 2-3, 5-10.

²⁴ See bp Sustainability Report 2023, [bp-sustainability-report-2023.pdf](#), p. 24; see also EPA-HQ-OAR-2021-0317-0807, p. 3.

otherwise. For example, a continuous monitoring system could pick up on very low levels of emissions from components that are subject to the “no identifiable emissions” standard under the final OOOO rules.²⁵ If such events are considered “deviations” that would render the facility ineligible for the regulatory compliance exemption, an operator may be incentivized to use less sensitive technologies allowed under the OOOO rules. This disincentive to the use of advanced monitoring technology would run counter to the goal of the statute to reduce methane emissions. It would also undermine EPA’s goal in the OOOO rules and the proposed Subpart W revisions to encourage the use of advanced technologies and more empirical emissions measurement methods.

Third party audits

EPA proposes that the agency will conduct a verification process to verify the data submitted by the WEC obligated party. If EPA discovers a “substantive error,” EPA will notify the party and provide 45 days (with a possible extension) for the party to submit information resolving the error.²⁶ However, if EPA remains unable to verify the WEC calculation after the WEC obligated party attempts to solve the issue, EPA may engage a third party to conduct a potentially costly and time-consuming audit at the expense of the WEC obligated party.²⁷

The proposed rule lacks clarity regarding the criteria for determining that a WEC calculation remains “unverified,” and at what point EPA will engage a third-party auditor. For example, if EPA notifies the WEC obligated party of a substantive error, and that party then submits a proposed correction, the rule does not specify whether EPA would continue to engage that party if further questions arise regarding the proposed correction.²⁸ Correcting an alleged error in a complex calculation may require an iterative process. If EPA remains unable to verify the report after an initial proposed correction by the WEC obligated party, we believe the WEC obligated party would still be in a better position to address the issue than a third-party auditor. EPA should clarify that it will continue to make reasonable attempts to resolve any remaining challenges in verifying the WEC calculation prior to engaging a third party.

This is particularly important given that, under the new methane and GHG reporting regulations, operators will be assessing a significant amount of new and complex emissions data. This may present new data reconciliation challenges both for reporting and for calculating the WEC. Acknowledging these new challenges, we encourage EPA to ensure there is a high threshold for triggering a third-party audit in order to address WEC reporting and calculation errors. Otherwise, operators may be

²⁵ *See, e.g.*, § 60.5411b(a)(3).

²⁶ 89 FR at 5350-51.

²⁷ *Id.* at 5352-53.

²⁸ *See id.* at 5371 (proposed § 99.7(f)).

disincentivized from utilizing more advanced, empirical emissions monitoring and measurement methods.

Conclusion

bp appreciates the opportunity to offer comments and suggestions on this proposal. Should you have any questions, please contact me at isabel.mogstad@bp.com.

Sincerely,

/s/ Isabel Mogstad

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