



## EPA's Supplemental Proposal to Reduce Pollution from Oil and Natural Gas Operations to Fight the Climate Crisis and Protect Public Health: State Planning Process

- November 11, 2022 – The U.S. Environmental Protection Agency (EPA) is proposing to update, strengthen and expand its November 2021 proposal that would secure major climate and health benefits for all Americans by reducing emissions of methane and other harmful air pollution from both new and existing sources in the oil and natural gas industry. Oil and natural gas operations are the nation's largest industrial source of methane, a highly potent climate pollutant that is responsible for approximately one-third of current warming resulting from human activities. They are also a leading source of other harmful air pollutants, including smog-forming volatile organic compounds (VOCs) and air toxics such as benzene.
- The Agency's supplemental proposal would make emissions reductions from oil and natural gas operations more comprehensive by improving some of the standards proposed in 2021 and adding proposed requirements for sources not previously covered by the rules.
- The supplemental proposal also provides greater clarity and specificity for states that must develop plans to reduce methane emissions from existing sources, and for federally recognized Tribal Nations that choose to develop plans for existing sources in Indian country.

### Updated Elements of the Proposal Would:

- Ensure that all well sites are routinely monitored for leaks, with requirements based on the type and amount of equipment on site;
- Encourage the deployment of innovative and advanced monitoring technologies by establishing performance requirements that can be met by a broader array of technologies;
- Prevent leaks from abandoned and unplugged wells by requiring documentation that well sites are properly closed and plugged before monitoring is allowed to end;
- Leverage qualified expert monitoring to identify "super-emitters" for prompt mitigation;
- Strengthen requirements for flares to ensure they are properly operated to reduce emissions;
- Set a zero-emissions standard for pneumatic pumps at affected facilities in all segments of the industry, with exceptions limited to sites without access to electricity;
- Establish emission standards for dry seal compressors, which are currently unregulated; and

- Require owners/operators of oil wells with associated gas to implement alternatives to flaring the gas, unless they submit a certified demonstration that all alternatives are not feasible for technical or safety reasons.
- The updated requirements EPA is proposing would apply to both the Agency’s New Source Performance Standards (NSPS) for new, modified and reconstructed sources, and as presumptive standards to assist states in developing plans under the proposed Emissions Guidelines for existing sources.

### Protecting Climate and Air Quality is a Federal-State Partnership

- Section 111(b) of the Clean Air Act assigns EPA the job of developing New Source Performance Standards (NSPS) for certain categories of new, modified and reconstructed sources of air pollution. Once EPA issues an NSPS for certain pollutants, section 111(d) of the law requires the Agency to issue regulations establishing procedures for states to submit plans that reduce those pollutants from existing sources in the same industrial category. These regulations are known as “Emissions Guidelines.”
- Emissions Guidelines do not impose requirements directly on sources. Instead, they establish procedures for states to follow as they develop plans that establish, implement and enforce performance standards for “designated facilities,” which is the term EPA uses for existing sources.
- Existing sources located in Indian country would not be included in a state’s plan. Eligible Tribal Nations would have the opportunity, but not the obligation, to develop their own plans that establish performance standards for existing sources on their lands.
- In addition to proposing updates to proposed presumptive standards to assist states in developing their existing source plans, EPA’s supplemental proposal includes more detailed requirements for states as they develop plans to reduce emissions from existing oil and natural gas sources.

### Steps for Leveraging Existing State Programs

- A number of states have issued, or have proposed, their own regulations for methane. EPA’s November 2021 proposal would give states the flexibility to leverage their existing programs for their state plans or to develop new programs that are at least as effective as EPA’s presumptive standards.
- The supplemental proposal includes three steps for determining whether existing state programs can be considered equivalent to the presumptive standards on a source-by-source basis. This source-by-source approach will allow states to pick and choose which state standards they want to leverage for their state plan development. The proposed steps are:
  - Step 1 – Is the designated facility (existing source) definition, pollutant and format of the standards (such as a numerical emissions limit or a work practice standard), the

same as in the Emissions Guidelines? If the answer is yes, the state would go to Step 2.

- Step 2 – Can the state demonstrate that its requirements for the existing sources reduce as much or more methane as the presumptive standards in the Emissions Guidelines? States would have several options to make this demonstration. If the answer is yes, then the state could proceed to Step 3.
- Step 3 – Can the state demonstrate that compliance measures for an existing facility under the state program (such as monitoring, recordkeeping and reporting) are at least as effective as the compliance measures in the presumptive standard? The state would need to include this demonstration in its plan.
- EPA is seeking comment on whether other factors or criteria should be included in states' equivalency determinations.

#### Requirements for Meaningful Engagement

- EPA's November 2021 proposal included a requirement that states identify and conduct meaningful engagement with underserved and overburdened communities as they develop state plans. The supplemental proposal expands on that proposed requirement to provide definitions and additional detail about meaningful engagement requirements.
- The Agency is proposing to define meaningful engagement as:
  - "... timely engagement with pertinent stakeholder representation in the plan development or plan revision process. Such engagement must not be disproportionate nor favor certain stakeholders. It must include the development of public participation strategies to overcome linguistic, cultural, institutional, geographic, and other barriers to participation to assure pertinent stakeholder representation, recognizing that diverse constituencies may be present within any particular stakeholder community. It must include early outreach, sharing information, and soliciting input on the State plan."
  - The proposed meaningful engagement requirement would be separate from the public hearings states are already required to hold.
- Under the supplemental proposal, states would be required to engage with industry, small businesses, communities and Tribal Nations most affected by and/or vulnerable to the impacts of a state plan or plan revision.
  - Affected communities often include communities of color, low-income communities, and Indigenous communities, and other communities in the U.S. that are more vulnerable to environmental hazards.
  - The supplemental proposal notes that states should identify Tribal Nations or communities in neighboring states for engagement if they would be affected by a state plan. EPA is seeking comment on how meaningful engagement should apply to

pertinent stakeholders inside and outside of the borders of the state that is developing a plan.

- The supplemental proposal would require that state plans include a list of pertinent stakeholders and a summary of the engagement the state conducted, along with the stakeholder input it received.
- EPA would evaluate a state’s meaningful engagement demonstration as part of its completeness evaluation of the state plan. If a state plan does not include required elements for public participation, including requirements for meaningful engagement, EPA may find that the plan is incomplete or disapprove it.

#### Requirements for Applying a Less-Stringent Standard to a Source

- State plans for implementing Emissions Guidelines must include standards that generally are as stringent as EPA’s presumptive standards. However, the Clean Air Act allows states to apply a less-stringent standard to a particular existing source or class of existing sources based on the source’s remaining useful life and other factors.
- EPA is proposing to allow states to apply a less-stringent standard to an existing source or class of existing sources, if they can demonstrate:
  - The cost of control is unreasonable because of a facility’s age, location or basic process design;
  - It is physically impossible or technically impossible to install necessary emissions controls; or
  - Factors specific to the facility are fundamentally different than factors EPA considered in determining the best system of emission reduction, or “BSER.”
- The supplemental proposal includes requirements for information that states must include in those demonstrations.
- EPA is proposing to require states to consider communities most affected by and vulnerable to the impacts of a particular facility in evaluating whether to apply a less-stringent standard to that source. State plans would have to identify where and how a less-stringent standard would affect communities and describe the impacts the standard would have. States also would have to provide any feedback the state received on the less-stringent standard during meaningful engagement on development of its state plan.
- In addition, EPA is proposing to allow states, at their discretion, to apply a standard that is *more* stringent than the presumptive standards in the proposed Emissions Guidelines.

#### State Plan Deadlines and Compliance Times

- EPA is proposing to require states to submit their plans for review within 18 months after the final Emissions Guidelines are published in the Federal Register. The supplemental proposal does not include the timeline for EPA to review the plans; the Agency will address

that timeline in a separate upcoming proposed rule that would amend EPA's implementing regulations for section 111(d) of the Clean Air Act.

- States would be required to impose a compliance deadline on existing sources that is no later than 36 months after the deadline to submit the state plan to EPA.
- EPA expects to propose updates shortly, in a separate implementation rule, to establish requirements that will generally apply to all of EPA's future Emissions Guidelines under Clean Air Act section 111(d). That rule will address many of the same topics covered in the proposed Emissions Guidelines for the oil and natural gas industry. To the extent that there are differences between specific requirements in the two proposed rules, the oil and gas Emissions Guidelines would supersede the proposed requirements in the implementation rule.

For More Information

- [Read the proposed rule and additional fact sheets.](#)